

Please note: These transcripts are not individually reviewed and approved for accuracy.

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD  
BOARD MEETING

CIWMB BOARD ROOM  
8800 CAL CENTER DRIVE  
SACRAMENTO, CALIFORNIA

WEDNESDAY, JANUARY 24, 2001

9:35 A.M.

Doris M. Bailey, CSR, RPR, CRR  
Certified Shorthand Reporter  
License Number 8751

James F. Peters, CSR, RPR  
Certified Shorthand Reporter  
License Number 10063

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

A P P E A R A N C E S

BOARD MEMBERS PRESENT:

LINDA MOULTON-PATTERSON, Chair  
DAN EATON  
STEVEN R. JONES  
JOSE MEDINA  
MICHAEL PAPARIAN  
DAVID A. ROBERTI

STAFF PRESENT:

BONNIE BRUCE, Interim Executive Director  
KARIN FISH, Chief Deputy Director  
MARK LEARY, Deputy Executive Officer  
JULIE NAUMAN, Deputy Executive Director  
PATTY WOHL, Deputy Executive Director  
KATHRYN TOBIAS, Chief Counsel  
ELLIOT BLACK, Legal Counsel  
YVONNE VILLA, Board Assistant  
DEBORAH MCKEE, Board Assistant

--oOo--

Please note: These transcripts are not individually reviewed and approved for accuracy.

iii

I N D E X

	PAGE
Item I        Call to order	1
Item II       Roll Call and Declaration of Quorum	1
Item III      Opening Remarks	1
Item IV       Reports and Presentations	2
Item 16       Consideration of RFSWP for Advance Disposal TPF, San Bernardino County	4
Item 17       Consideration of RSWFP for Ocotillo Solid Waste Site, Imperial County	9
Item 18       Consideration of RSWFP Sacramento R&TS, Sacramento County	17
Item 32       Discussion of State Audits Report	21
Afternoon Session	130
Item 32       Discussion of State Audits Report (Continued)	130
Item 21       Consideration of Board's Long Term Violation Policy	201
Evening Recess	232
Item 20       Consideration of Proposed Regulations for Putrescible Materials	279
Item 22       Consideration for Report on Farm and Ranch Solid Waste Cleanup Grant Program	296
Item 4        Consideration of Facility Compliance Loans	304
Item 23       Consideration of Improving Waste Paint Management	308
Item 24       Consideration of New Major Waste Tire Facility Permit	337
Item 25       Presentation of the Board's Royster Tire Fire Suppression Effort	337

Please note: These transcripts are not individually reviewed and approved for accuracy.

iv

1	INDEX CONTINUED	
2		PAGE
3	Item 28 Consideration of Scope of Work for	
4	Plastics White Paper Contract	341
5	Item 29, 30 & 31	348
6	Reporters' Certificates	364,
7		365
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 P R O C E E D I N G S

2 --oOo--

3 BOARD CHAIR MOULTON-PATTERSON: Welcome to the  
4 second day of our January Board meeting.

5 Would the secretary please call the roll?

6 BOARD SECRETARY VILLA: Dan Eaton.

7 BOARD MEMBER EATON: Here.

8 BOARD SECRETARY VILLA: Steven R. Jones.

9 BOARD MEMBER JONES: Here.

10 BOARD SECRETARY VILLA: Jose Medina.

11 BOARD MEMBER MEDINA: Here.

12 BOARD SECRETARY VILLA: Michael Paparian.

13 BOARD MEMBER PAPARIAN: Here.

14 BOARD SECRETARY VILLA: David A. Roberti.

15 (No response.)

16 BOARD SECRETARY VILLA: Linda Moulton-Patterson.

17 BOARD CHAIR MOULTON-PATTERSON: Here. We have a  
18 quorum.

19 Again, welcome to members of the audience. I'd  
20 like to please request that you turn off all cell phones  
21 and pagers.

22 Also, if you would like to speak on an item,  
23 there's speaker slips at the back table. If you'll hand  
24 them to Ms. Villa, she'll make sure that we hear your  
25 comments at the appropriate time.

1 I'd also like to announce the formation of a  
2 subcommittee with the concurrence of the Board to work on  
3 the selection of the executive director. The members are  
4 Steve Jones, Jose Medina, and Michael Paparian.

5 Many of you were here yesterday and, as you  
6 know, we had a full day. We will be going back to item  
7 four just as soon as the resolution is finished.

8 And also, I'm not sure if I announced it  
9 yesterday or not, but the executive director, interim  
10 executive director has pulled item 26, and I wanted to  
11 make sure you knew that.

12 Ex partes. Mr. Eaton?

13 BOARD MEMBER EATON: Just this morning a meet  
14 and greet with Kelly Astor regarding the joys of the  
15 private sector he was telling me about.

16 And then I received two letters last night, I  
17 don't know if you were going to ex parte them for us or  
18 not, but I'll just put them in. I assume all the Board  
19 members received them last night, but they were submitted  
20 late by Mike Mohajer last night, not late in terms of for  
21 the item but just late last evening, January 22nd, to  
22 you, Madam Chair from Ginger Bremberg delivered through  
23 Michael, I believe.

24 And then a second letter also from Ms. Bremberg,  
25 the same date, one on item 32 and the other one, I

1 believe, on Bayshore Diversion study. That brings us up  
2 to speed.

3 BOARD CHAIR MOULTON-PATTERSON: Thank you for ex  
4 parte. Mr. Jones.

5 MR. JONES: Thanks, Madam Chair. I am in  
6 receipt of those same letters as well as one on the,  
7 they're titled, "Preliminary comments on the State Audits  
8 Report," and it is Kelly Astor, Denise Delmatier, John  
9 Gullledge, Chuck Helget, Josh Pane, Karen Keene, Kent  
10 Stoddard, and Paul Yoder.

11 Quick meet and greets with, quick meet and  
12 greets with Kelly Astor, with Denise Delmatier. And  
13 probably, and then just a couple hellos from my friends  
14 from Southern Cal, but no issues on the agenda.

15 That's it.

16 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.  
17 Jones.

18 Mr. Medina.

19 MR. MEDINA: None to report.

20 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

21 BOARD MEMBER PAPARIAN: The same letters that  
22 Mr. Eaton reported as well as the letter that Mr. Jones  
23 reported. And I'm not sure if I heard this letter or not  
24 so I'll go ahead and mention it. I got a letter from  
25 John Gullledge of the County Sanitation Districts of Los

1 Angeles regarding the audit report.

2 And then I did have a brief conversation with

3 John Cupps.

4 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank

5 you. And I have none since Mr. Eaton ex parted those for

6 all of us.

7 MR. MEDINA: Madam Chair, I do have one letter

8 from a Mr. Harry Stone, and it's a letter that went to

9 you from Ginger Bremberg.

10 BOARD CHAIR MOULTON-PATTERSON: I think that's

11 the one Mr. Eaton had. Thank you.

12 Okay, as many of you know, at 10:00 o'clock we

13 will be discussing audit report item number 32.

14 But we're going to go ahead and I'm going to

15 invite Ms. Nauman up, and we'll go ahead and get started

16 with some the items in her area until the 10:00 o'clock

17 hour.

18 Item 16 you wanted to start on, Ms. Nauman.

19 MS. NAUMAN: My name is Julie Nauman, and I'm

20 Deputy Director of the Permitting and Enforcement

21 Division.

22 Just to kind of recap where we let off last

23 night on item number four, which is the continued

24 business on the consideration of approval of the Facility

25 Compliance Loan program.



1           Program staff continue to work this morning to  
2   finalize the resolution as you directed last night, so  
3   we'll have that ready for you later today.

4           BOARD CHAIR MOULTON-PATTERSON:   Thank you.

5           MS. NAUMAN:   So in the meantime we'll move on to  
6   the permit items.   And item number 16 is consideration of  
7   a revised full solid waste permit for Advance Disposal  
8   Transfer/Processing Facility in San Bernardino County.  
9   Suzanne Hambleton will present this item.

10          MS. HAMBLETON:   Suzanne Hambleton representing  
11   the Permitting and Inspection Branch.

12          I am delivering this presentation this morning  
13   as Dianne Ohiosumua, the staff who did most of the work  
14   on this, is unable to attend the meeting today.

15          I'd like to introduce Mr. Matt Slowick of the  
16   San Bernardino LEA, and we will be discussing item 16.

17          The proposed permit is to expand the operations  
18   of the existing mixed solid waste transfer processing  
19   facility, including an increase in the maximum permitted  
20   level of waste from 200 tons per day to 600 tons per day;  
21   and allow an extension of operating hours from the  
22   current 8:00 a.m. to 5:00 p.m. five days per week for  
23   receiving and processing waste, to 6:00 a.m. to 10:00  
24   p.m. seven days a week for receiving waste, and 24 hours  
25   a day, seven days a week for processing waste.

1           Advance Disposal, Inc. owns and operates this  
2 transfer processing facility on seven acres in Hesperia.  
3 The site is located in a general manufacturing zone and  
4 is surrounded by industrial slash commercial uses. The  
5 nearest single family dwelling or residence is  
6 approximately 2,000 feet away. The operator has not  
7 received any complaints since opening the facility in  
8 1993.

9           At the time this item was prepared staff had not  
10 concluded the pre-permit inspection. On January 5th of  
11 this year, pre-permit inspection was conducted, and Board  
12 staff made a finding that the permit was not in  
13 compliance with Title 14, California Code of Regulations,  
14 two sections; that was recordkeeping and training.

15           However, these violations have been corrected,  
16 and now the site is in compliance with state minimum  
17 standards.

18           Since all the outstanding issues have been  
19 resolved, and Board staff and the LEA have determined  
20 that all the requirements for the proposed permit have  
21 been met, at this time staff would recommend that the  
22 Board adopt permit decision 2001-13 Revised, concurring  
23 in the issuance of Solid Waste Permit 36-AA-0337 for the  
24 Advance Disposal Transfer/Processing Facility.

25           Representatives of Advance Disposal, Inc. are in

1 the audience, and I or Mr. Slowick can answer any  
2 questions that you may have.

3 And this concludes my presentation.

4 BOARD CHAIR MOULTON-PATTERSON: Thank you very  
5 much. Any questions? Mr. Eaton? I'm sorry.

6 MR. PAPARIAN: Madam Chair.

7 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

8 MR. PAPARIAN: I had a question, I assumed he  
9 was getting ready to move it. I think we asked at the  
10 briefing, I think Mr. Medina might have asked this, the  
11 route of the trucks going in and out of the facility,  
12 whether there was any concern about that by residents.

13 MR. SLOWICK: The question is have we received  
14 any concerns or complaints or questions about the manner  
15 in which the routing of the trucks occurs to the site?  
16 Is that the question?

17 MR. PAPARIAN: Basically, yeah.

18 MR. SLOWICK: No, we haven't had any problems  
19 with that. No calls, no contacts, no concerns. And  
20 again, just as we summarized in the report here, that the  
21 general land uses are characterized more so by industrial  
22 commercial land uses than residential, so that sort of  
23 ties into why we haven't received any.

24 BOARD MEMBER PAPARIAN: Okay. Thanks.

25 BOARD CHAIR MOULTON-PATTERSON: Excuse me.

1 Senator Roberti, do you have any ex-parte to declare?

2 BOARD MEMBER ROBERTI: No.

3 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

4 BOARD MEMBER JONES: Madam Chair just so people  
5 know, in Hesperia they're up around 50.2 or three percent  
6 diversion, thanks in large part to this facility.

7 I want to move adoption of Resolution 2001-13,  
8 Consideration of a Revised Full Solid Waste Permit for  
9 Advance Disposal Transfer Processing Facility in San  
10 Bernardino County.

11 BOARD MEMBER PAPARIAN: Second.

12 BOARD CHAIR MOULTON-PATTERSON: Motion by Mr.  
13 Jones, seconded by Mr. Paparian.

14 Please call the roll.

15 BOARD SECRETARY VILLA: Eaton.

16 BOARD MEMBER EATON: Aye.

17 BOARD SECRETARY VILLA: Jones.

18 BOARD MEMBER JONES: Aye.

19 BOARD SECRETARY VILLA: Medina.

20 BOARD MEMBER MEDINA: Aye.

21 BOARD SECRETARY VILLA: Paparian.

22 BOARD MEMBER PAPARIAN: Aye.

23 BOARD SECRETARY VILLA: Roberti.

24 BOARD MEMBER ROBERTI: Aye.

25 BOARD SECRETARY VILLA: Moulton-Patterson.

1 BOARD CHAIR MOULTON-PATTERSON: Aye.

2 We're going to go to 17, Ms. Nauman, is that correct?

3 MS. NAUMAN: Yes. Item number seventeen is  
4 Consideration of a Revised Solid Waste Facility Permit  
5 for the Ocotillo Solid Waste Site in Imperial County.  
6 And you have a revised agenda item, and I believe there  
7 are copies in the back.

8 Leslie Reed, one of our newer members of P&I  
9 branch will be making her first presentation before the  
10 Board this morning. Not to make her nervous or anything.  
11 And she doesn't have to go through the initiation ritual  
12 or anything. So Leslie, go ahead.

13 MS. NEWTON-REED: Good morning, Chairman  
14 Moulton-Patterson and Board members. My name is Leslie  
15 Newton-Reed, and I'm with the Permitting and Inspections  
16 Branch.

17 You should have received a copy of the revised  
18 agenda item. And additionally, I would like to point out  
19 that a change to page 17-3 should be made under key  
20 issues, bullet number six.

21 At the end of the paragraph number, excuse me,  
22 "number of days may be adjusted" should be lined out, and  
23 added to would be, "two days the landfill operates can be  
24 adjusted."

25 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank

1 you.

2 MS. NEWTON-REED: The Ocotillo solid waste site  
3 is owned by the United States Department of Interior,  
4 Bureau of Land Management, and operated by the County of  
5 Imperial Public Works Department.

6 The proposed permit will allow for the following  
7 changes:

8 An increase in tonnage from one, from less than  
9 one ton per day to an average of nine tons per day with a  
10 daily peak of fifteen tons per day, excuse me.

11 Decrease in permitted disposal area from forty  
12 acres to 5.3 areas.

13 Decrease in permitted design capacity from  
14 516,000 cubic yards to 47,220 cubic yards.

15 Designate a maximum elevation of 433.6 feet  
16 above mean sea level.

17 Change in the permitted hours of operation from  
18 24 hours a day seven days a week to Sunday and Monday  
19 from 8:00 a.m. to 4:00 p.m.

20 Closure date will change from 2030 to March of  
21 2004.

22 Since the landfill was first permitted in 1980,  
23 excuse me, February of 1980, these changes have occurred,  
24 and this revised permit is presenting the current  
25 operating conditions.

1           As presented on table, excuse me, in the table  
2 on page 714 of this agenda item, Board staff have  
3 determined that the requirements for the proposed permit  
4 have been met.

5           Notably, Board staff performed a pre-permit  
6 inspection of the facility on January 8th, 2001. No  
7 violations of state minimum standards were noted.

8           On December 20th, 2000, the LEA deemed the  
9 preliminary closure, post closure maintenance plan  
10 complete and correct.

11           Therefore, staff recommend that the Board adopt  
12 Solid Waste Facility Permit decision number 2001-14,  
13 concurring with the issuance of Solid Waste Facility  
14 Permit number 13-AA-0005.

15           CHIEF COUNSEL TOBIAS: Madam Chair.

16           BOARD CHAIR MOULTON-PATTERSON: Yes.

17           CHIEF COUNSEL TOBIAS: May I point out that  
18 while the staff was changing that language on page 17-3,  
19 I'm not sure it was clear why that was being adjusted.

20           If you turn to the permit condition that's on  
21 page 17-8 it says that, "The operator, with LEA approval,  
22 may alternate the days of operation while remaining  
23 within two operating days per week." So basically  
24 they're specifying which day they're operating, but they  
25 may be able to change the day so long as they stay within

1 the two.

2 And the way it was written it basically said the  
3 number days may be adjusted, so I wanted to clarify that  
4 since it was somewhat ambiguous between what was in the  
5 permit and what was changed.

6 BOARD CHAIR MOULTON-PATTERSON: Thank you.

7 Okay.

8 MS. NEWTON-REED: We have Gerald Quick with the  
9 County of Imperial Local Enforcement Agency is present to  
10 answer any questions that the Board members may have on  
11 the proposed permit.

12 This concludes the staff presentation.

13 BOARD CHAIR MOULTON-PATTERSON: Thank you very  
14 much. Questions?

15 MR. DE BIE: Madam Chair, clarification on the  
16 resolution. There are several versions of the resolution  
17 floating around for several reasons.

18 One was when the item was written we hadn't yet  
19 received the final permit, as well as the resolution on  
20 the initial draft. And then some corrections were made  
21 to the resolution. And then we found other things that  
22 needed to be changed.

23 So the resolution is revision two, resolution  
24 2001-14 Revision 2.

25 BOARD MEMBER EATON: I just have a quick



1 question. When was the closure, post closure that was  
2 submitted and deemed complete on January 8, is that  
3 correct, by the LEA?

4 MS. NEWTON-REED: No, that was December 20th,  
5 2000.

6 BOARD MEMBER EATON: Okay. When was the  
7 financial assurances signed off by our staff? Was it  
8 based upon the early closure date of 2004 or 2030? I  
9 just want to make sure that the financial assurances are  
10 adequately reflected in the 2004 because we had that  
11 issue pop up a couple times yesterday.

12 So financial assurance is based upon the 2004 or  
13 2030 date?

14 MR. ADAMS: Garth Adams, Financial Services  
15 Section. Similar to the conversations we had yesterday,  
16 it's going to be basically as fast as they fill it. The  
17 site doesn't have a lot of capacity used at this point,  
18 they have a lot of remaining capacity. The plan  
19 apparently is to put a low volume transfer station at the  
20 facility. I don't know that they plan on in the next  
21 four years filling up the site to its maximum capacity.  
22 If they do, they have four years to fund it. But  
23 there's --

24 BOARD MEMBER EATON: And do we get advised of  
25 that on a regular basis?

1 MR. ADAMS: Yes.

2 BOARD MEMBER EATON: This is not with respect  
3 just to Ocotillo but for all of the others as well. What  
4 is the mechanism that triggers us going back in, is it  
5 just on our annual inspection, or is it just on a regular  
6 basis based on, you know, volume and inspection reports?

7 MR. ADAMS: Based on the annual amount filled is  
8 plugged into a formula, and that formula calculates the  
9 amount of deposit, and that's reported annually.

10 BOARD MEMBER EATON: For all landfills or --

11 MR. ADAMS: All of the ones using buildups like  
12 a trust fund or an enterprise fund.

13 BOARD MEMBER EATON: Thank you.

14 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

15 BOARD MEMBER PAPARIAN: Don't go away. There's  
16 a statement here I don't remember seeing before, and I  
17 just wanted to understand it, in the financial closure  
18 post closure paragraph on page 17-5, the last sentence  
19 says, "Due to the dynamic nature of financial assurance  
20 demonstration, the information provided in this memo is  
21 valid until February 1st, 2001."

22 What does that mean?

23 MR. ADAMS: Do --

24 MR. DE BIE: Well, while Garth is reading that  
25 through. That's typical of the kind of information we

1 receive from the Financial Assurance Group. As Garth  
2 just indicated, these funds are looked at annually. So  
3 the assessment that they're adequately funded has some  
4 restrictions on how far out you can predict, whether or  
5 not they're going to be adequately funded in six months  
6 or a year, based on when they need to make their next  
7 payment.

8 BOARD MEMBER PAPARIAN: Okay. So this is not  
9 something special to this facility?

10 MR. DE BIE: What might be special is that  
11 Leslie included it in your agenda item. It's typically  
12 in the memo we get from Financial Assurances.

13 MR. ADAMS: It's more of an internal process for  
14 us. We get a request to review financial assurances  
15 during submittal of a permit. We look at it, we  
16 determine if it's adequately funded. We basically say  
17 it's a thirty day window, past that we have the cost  
18 estimate, the anniversary date could come up, just  
19 there's many factors that could change it.

20 So instead of saying, you know, it's good for  
21 the year, we say it's good for thirty days and if you  
22 want, you know, something else comes up, another permit  
23 review, change in a closure plan, we will look at it  
24 again.

25 BOARD MEMBER PAPARIAN: Thanks.

1 BOARD CHAIR MOULTON-PATTERSON: Thanks. Any  
2 other questions?

3 BOARD MEMBER JONES: Madam Chair.

4 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

5 BOARD MEMBER JONES: I'll move adoption of  
6 Resolution 2001-14 Revision 2 for the Consideration of  
7 Revised Solid Waste Facility Permit for the Ocotillo  
8 Solid Waste site in Imperial County.

9 BOARD MEMBER MEDINA: Second.

10 BOARD CHAIR MOULTON-PATTERSON: We have a motion  
11 by Mr. Jones, seconded by Mr. Medina.

12 Please call the roll.

13 BOARD SECRETARY VILLA: Eaton.

14 BOARD MEMBER EATON: Aye.

15 BOARD SECRETARY VILLA: Jones.

16 BOARD MEMBER JONES: Aye.

17 BOARD SECRETARY VILLA: Medina.

18 BOARD MEMBER MEDINA: Aye.

19 BOARD SECRETARY VILLA: Paparian.

20 BOARD MEMBER PAPARIAN: Aye.

21 BOARD SECRETARY VILLA: Roberti.

22 BOARD MEMBER ROBERTI: Aye.

23 BOARD SECRETARY VILLA: Moulton-Patterson.

24 BOARD CHAIR MOULTON-PATTERSON: Aye.

25 Thank you, motion approved. I think we'll go

1 ahead and finish item 18.

2 MS. NAUMAN: Item 18 is consideration of the  
3 Revised Solid Waste Facility Permit for the Sacramento  
4 Recycling and Transfer Station in Sacramento County. And  
5 the presentation will be made by Mary Madison-Johnson who  
6 you may recognize as Mary Coyle.

7 MS. MADISON-JOHNSON: Yes. Good morning, Madam  
8 Chair. I am Mary Madison-Johnson of the Permitting and  
9 Inspection Branch.

10 The Sacramento Recycling and Transfer Station is  
11 an existing large volume transfer station and MRF and  
12 located on 19.5 acres on Fruitridge Road in Sacramento,  
13 with heavy industrial zoning, and is currently permitted  
14 to accept 1,500 tons a day.

15 It is zoned and operated by BLT Enterprises.  
16 The facility was first built and permitted in March of  
17 1999. At that time the operator was building their  
18 business in phases, and in July and August of '99  
19 realized that they could handle more tonnage as the  
20 design capacity is 2,500 tons a day.

21 They had to turn away business in August,  
22 September, and October of '99 as they had reached their  
23 daily tonnage limit.

24 In November of '99 the LEA issued the operator a  
25 stipulated agreement which allowed them to exceed their

1 daily tonnage for six months. This allowance was for  
2 only Mondays and Fridays only so that they can handle  
3 their peak tonnage, and allowed an additional 250 tons a  
4 day, not to exceed 1,750.

5 During that time the operator was to obtain a  
6 revised solid waste facility permit by May, 2000.

7 Because the operator experienced delays in the  
8 permitting process, they voluntarily stopped exceeding  
9 their tonnage in June, 2000, and returned to their  
10 permitted limit of 1,500 tons per day.

11 During the briefing a question came up regarding  
12 odor complaints. The LEA did receive one complaint in  
13 August of 1999 stemming from a leaky truck in the  
14 Detarping area. That has since been rectified, and no  
15 other complaints have been received.

16 The proposed Solid Waste Facility Permit would  
17 allow the following: Expand hours of operation; increase  
18 daily tonnage from 1,500 to 2,000 tons a day; and  
19 increase the permitted traffic volumes.

20 All findings have been made and the package is  
21 complete and correct and meets the requirements.

22 Staff recommend that the Board adopt Resolution  
23 2001-15 concurring in the issuance of the Solid Waste  
24 Facility Permit 34-AA-0195.

25 Tammy Derby with the LEA and representatives

1 from BLT are in the audience, and Tammy is at the table  
2 with me and we can answer any questions that you may  
3 have.

4 This concludes staff's presentation.

5 BOARD CHAIR MOULTON-PATTERSON: Thank you. Mr.  
6 Paparian.

7 BOARD MEMBER PAPARIAN: A quick question. Where  
8 does the waste go from the facility?

9 BOARD CHAIR MOULTON-PATTERSON: The waste, this  
10 is Sacramento City waste, and it goes to a landfill up in  
11 Reno, around the Reno area.

12 BOARD MEMBER PAPARIAN: Okay. So this is not to  
13 speak to the merits of this proposal, but I just want to  
14 note that the good people of Los Angeles and San  
15 Bernardino and elsewhere are subsidizing our regulation  
16 of this facility because of where our waste is going.

17 BOARD MEMBER JONES: Madam Chair.

18 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

19 BOARD MEMBER JONES: I'll move adoption of  
20 resolution 2001-15, Consideration of a Revised Solid  
21 Waste Facility Permit for the Sacramento Recycling and  
22 Transfer Station in Sacramento County.

23 BOARD MEMBER EATON: I'll second it. And I also  
24 believe the rest of the people in San Francisco and other  
25 places too are good people too, Mr. Paparian, as well.

1               BOARD MEMBER PAPARIAN: There are many good  
2 people in the state.

3               (Thereupon occurred simultaneous discussion.)

4               BOARD MEMBER EATON: If you want to get into a  
5 some regionalism. I'm just kidding. I want to second  
6 the motion.

7               BOARD CHAIR MOULTON-PATTERSON: Okay. We have a  
8 motion by Mr. Jones, seconded by Mr. Eaton.

9               Please call the roll.

10              BOARD SECRETARY VILLA: Eaton.

11              BOARD MEMBER EATON: Aye.

12              BOARD SECRETARY VILLA: Jones.

13              BOARD MEMBER JONES: Aye.

14              BOARD SECRETARY VILLA: Medina.

15              BOARD MEMBER MEDINA: Aye.

16              BOARD SECRETARY VILLA: Paparian.

17              BOARD MEMBER PAPARIAN: Aye.

18              BOARD SECRETARY VILLA: Roberti.

19              BOARD MEMBER ROBERTI: Aye.

20              BOARD SECRETARY VILLA: Moulton-Patterson.

21              BOARD CHAIR MOULTON-PATTERSON: Aye. Okay.

22 Thank you. So that concludes 18, and at this time we'll  
23 move to item 32.

24              MS. NAUMAN: Item 32 is discussion of the Bureau  
25 of State Audits report entitled, "California Integrated



1 Waste Management Board -- Limited Authority and Weak  
2 Oversight Diminish its Ability to Protect Public Health  
3 and Environment."

4 BOARD CHAIR MOULTON-PATTERSON: Mrs. Nauman, I'd  
5 like to invite Joanne Quarles and Denise Vose from the  
6 Auditor's Office to join you at the table if they'd like  
7 to.

8 Thank you. We very much appreciate you coming  
9 today, and we understand you're here to answer Board  
10 member's questions, and we appreciate you being here.

11 Thank you. I'm sorry Ms. Nauman.

12 MS. NAUMAN: Madam Chair and members, I'll keep  
13 the staff report fairly brief to give you ample time for  
14 your discussion.

15 Just let me indicate, however, that you do have  
16 an agenda item that reviews the report which was released  
17 by the auditors on December 11th of last year.

18 The report contains 16 recommendations. Those  
19 recommendations are listed in the summary of the staff  
20 analysis. The staff analysis proceeds to discuss each of  
21 the recommendations in a little more detail than the  
22 response that we sent to the auditors during the official  
23 review and response period.

24 Let me just also indicate that in terms of our  
25 recommendation, we are, this is a discussion item, we are

1 not looking for any specific direction, although we're  
2 willing to take any direction you may provide, but we're  
3 not making any recommendations ourself with respect to  
4 any of the recommendations.

5           Additionally, though, I would like to point out  
6 that the transmittal letter to Secretary Hickox indicates  
7 that the auditors are requesting a report back from the  
8 Board at sixty days from the December 11th release date,  
9 at six months, and at one year. That report is supposed  
10 to address your efforts to implement their  
11 recommendations.

12           Given that that sixty days will be upon us in  
13 early February, prior to your February Board meeting,  
14 staff will be looking for your direction during this  
15 discussion as to the development and content of that  
16 report that we will be preparing for transmittal prior to  
17 the February 11th due date.

18           If you would like, we can go through each of the  
19 recommendations, or you may just begin your discussion  
20 and questions of those staff and the auditors.

21           What's your pleasure?

22           BOARD CHAIR MOULTON-PATTERSON: I think I'd like  
23 you to go through the recommendations.

24           MS. NAUMAN: Okay. The first recommendation,  
25 and I'm beginning really on the bottom of page 32-3 is in

1 the area of capacity. And what we have done is given you  
2 some excerpts from the Auditor's report and then our  
3 analysis.

4 And actually what I'd like to do at this point  
5 is turn it over to Mark de Bie to walk through the  
6 staff's analysis of the information.

7 BOARD MEMBER ROBERTI: What are we working from?

8 MS. NAUMAN: We're working from agenda item 32.

9 BOARD MEMBER ROBERTI: Okay.

10 MR. DE BIE: Mark de Bie with Permitting and  
11 Inspections, Permitting and Enforcement Division.

12 As Julie indicated, the first, the way we  
13 organized the agenda item is sort of key issues and  
14 pulling out the sort of topic areas; first being landfill  
15 capacity. And there were two recommendations in the  
16 audit report:

17 One was to explore the options for taking into  
18 account the necessity for increased landfill capacity as  
19 a factor in granting permits;

20 As well as a recommendation to update the  
21 Board's database and require local governments to report  
22 accurate landfill capacity information on an annual basis  
23 in a consistent manner.

24 Staff's analysis includes information relative  
25 to the Board's history dealing with landfill capacity as

1 it relates to permits. It also includes some of the  
2 issues that staff has identified that would be  
3 potentially problematic in utilizing capacity in the  
4 Board's decision-making process relative to capacity,  
5 highlighting that currently capacity considerations are  
6 in the hands of the local government and not with the  
7 state, as well as issues relative to how you actually  
8 determine capacity when you measure capacity in a  
9 consistent way.

10 Those are the highlights of the staff analysis.

11 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank  
12 you. I might mention to my Board members, although  
13 they're never shy, but if you want to interrupt at any  
14 time as we go along it's, you know, fine. So either now  
15 as we go through each one or later.

16 Mr. Paparian.

17 BOARD MEMBER PAPARIAN: Thank you. This is  
18 specific to this item. Did we do any tracking of  
19 statewide capacity?

20 MR. DE BIE: We record, in the permit area we  
21 record estimated closure dates. In calculating those  
22 closure dates we, there's information relative to current  
23 capacity, total capacity, those sorts of things.

24 But we, in the permit area, don't  
25 comprehensively record that kind of data out of the

1 technical documents from the landfills. There's also  
2 some information gleaned through the Integrated Waste  
3 Management plans relative to the fifteen year requirement  
4 for landfill capacity.

5 BOARD MEMBER PAPARIAN: I mean it seems to me  
6 that, you know, regardless of what you think about  
7 applying a needs test to permitting, that having basic  
8 information about overall capacity in the state would be  
9 valuable. And I'm not sure what we can do to try to  
10 collect that in the future and compile it and report it,  
11 but I think that would be a good minimal step for us to  
12 take, and would provide some useful information for folks  
13 within the Board and outside the Board.

14 MR. DE BIE: There was a report developed  
15 several years ago outside the Board that examined this  
16 issue of capacity and how to record it, report it, keep  
17 track of it; and it identified a lot of issues that would  
18 need to be resolved in doing it in a comprehensive way.

19 But it's certainly not impossible to and -- well  
20 let me say this. We can certainly improve what we're  
21 currently doing, but whether or not it would be, the  
22 margin of error would be such that it would be useful  
23 would have to seen on how many of those hurdles we could  
24 overcome.

25 BOARD MEMBER PAPARIAN: And I'm sure there would

1 be some extrapolations involved. But I still think that  
2 we could come up with a system that provided some sort of  
3 consistent year-to-year analysis of how much capacity  
4 there is.

5 I don't know how we want to do this, but this is  
6 an item I would like to come back to at some point.

7 BOARD CHAIR MOULTON-PATTERSON: I agree. Mr.  
8 Jones.

9 BOARD MEMBER JONES: In 1993 the report that Mr.  
10 de Bie was taking about was a landfill capacity report  
11 that was put together by this Board, it looked at  
12 capacity up and down the state.

13 Where it's a problems or where the holes were,  
14 do you put down how much capacity for what is permitted?  
15 Do you put down how much capacity for what, how much  
16 available air space there is? And then you still have to  
17 take into consideration what is the rate of fill for that  
18 particular, for that particular landfill.

19 There's three things. Because remember, a  
20 permit gets reviewed every five years. So in actuality  
21 the capacity that you're looking at is in a five year  
22 window because that's all that's been permitted.

23 While a permit can go to 2030, 2000 and -- it  
24 still has to go through a permit review. So we'd have to  
25 come up with a methodology that makes sense. Because the

1 report says that there's like 1.6 billion tons of  
2 capacity in the State of California. How much of that  
3 capacity is attributed to Eagle Mountain and to Mesquite.

4           If it's 1.1 billion as some of the letters have  
5 indicated, then in fact we don't have 1.6 billion. And  
6 that capacity is located in a remote part of Southern  
7 California that is designed to accept waste from Southern  
8 California if a system, an integral system of material  
9 recovery facilities and consolidation facilities are  
10 built to transport that waste via rail to that facility.

11           And I think that's very, very important with how  
12 we look at capacity issues in the State of California,  
13 because clearly there is a landfill shortage in Northern  
14 California. It is driven by Subtitle D.

15           It also goes to why some jurisdictions were not  
16 able to put in closure post closure plans two years prior  
17 to the closure. It was because, if you look at why  
18 Subtitle D and look in the federal record as to why  
19 Subtitle D treated small landfills in the way that they  
20 did, it says its intent was to close those sites.

21           So jurisdictions that would have to make a  
22 determination as to whether or not to expand that  
23 landfill to new Subtitle D or Title 27 requirements had  
24 to look at the waste stream to determine if they could  
25 get those, the dollars at a reasonable cost, and divide

1 it into that waste stream to see what the impact would be  
2 on the ratepayers. They shut those facilities down early  
3 because they could not fund landfills.

4 I had one of those. Our rate went to \$83 a  
5 ton. They could not continue to do that. It would have  
6 actually been \$126 a ton to expand the landfill. So  
7 that's why those facilities got closed. And that's,  
8 that's one of the things that we've got to really talk  
9 about.

10 I think there are some outstanding issues in  
11 this audit report that we really need to look at. But  
12 it's like everything else, we need to have the discussion  
13 as to what is the full breadth of solid waste management  
14 in the State of California.

15 If you look at the preamble to AB 939 it says  
16 that the Waste Board will work with local jurisdictions,  
17 in partnership with local jurisdictions to facilitate --  
18 I mean I'm paraphrasing -- but to facilitate the solid  
19 waste management system.

20 So, one other just anecdotal piece. We can have  
21 all the capacity you want. Go to the Yuba Sutter, or  
22 yeah, to the Yuba Sutter disposal landfill in  
23 Marysville. In 1986 there was a flood in Linden and  
24 Olivehurst when all of the homes were under three feet of  
25 water. All of the material from those homes baby



1   carriages, refrigerators, I mean everything in those  
2   homes were put on the curb.

3               We brought trucks out of San Francisco to help  
4   our sister company, and loaded up all that material which  
5   could not be recycled because it had been contaminated  
6   because of the sewer treatment systems and the septic  
7   tanks where those types of materials were floating on the  
8   water.

9               That material went into that landfill. We took  
10  five years capacity out of that landfill in less than  
11  four months.

12              If we were to take landfill capacity as a  
13  compliance issue or conformance issue, and something like  
14  that happened, who on this Board wants to take the  
15  responsibility to find an alternate site for that  
16  material to go? That's why they keep it as a local  
17  issue.

18              And I think that that's important in the context  
19  of trying to, it's a hard issue to deal with because it  
20  is, there's a lot of pieces, you know what I mean?  
21  There's a whole lot of different issues that need to be  
22  part of how you put a system together.

23              Plus, I think that there was a compliance  
24  requirement in AB 939 until 1986, and CSAC and the League  
25  of Cities sponsored a bill through Cortesi that said that

1 an A system, a facility within a county integrated  
2 system, is only a piece of an integrated system, and all  
3 pieces have a specific function.

4           So while there may be ten transfer stations and  
5 four landfills, the locals need to know how those pieces  
6 work to come up with an integrated system. And that's,  
7 in my view, why the system works, and why it was  
8 unanimously passed out of both house of the legislature  
9 and signed by the Governor that that conformance finding  
10 would be removed from AB 939 as part of AB 2009.

11           BOARD CHAIR MOULTON-PATTERSON: Mr. Eaton was  
12 next and then Senator Roberti.

13           BOARD MEMBER EATON: Yeah. I'd just like to  
14 thank the individuals from the Auditor's Office for  
15 coming today. I know it's a very, very difficult  
16 position to kind of be in, and in some ways I want to  
17 assure you that you're not here to be on the defensive or  
18 or anything.

19           But one of the things that I hoped would happen  
20 today is that you would listen to the differing  
21 viewpoints that arise. And as we all know, this is a  
22 very general report, and in some cases based upon  
23 examples, and everyone has examples that can be more  
24 specific that will sort of go against this report, and  
25 it's not meant to be critical.

1           In one of those that I'd like to be able to seek  
2 out and hear, from either the auditors, but also mainly  
3 through the speakers today, at least as it relates to  
4 issue one, is the whole interplay between the requirement  
5 of having a fifteen year capacity for some jurisdictions  
6 and how that relates to landfill capacity statewide.

7           Because in some cases those could be a situation  
8 wherein any Board, not just particularly this Board, but  
9 this Board may be responsible for a particular item and  
10 has to ensure that there's a fifteen year capacity which  
11 then may force the Board into being in a situation where  
12 it has to allow a permit to go forward based upon another  
13 law, or perhaps what appears on the surface to be a  
14 conflicting law.

15           So that would be just one issue as you listen  
16 today, and hopefully get some guidance in the future from  
17 the Auditor's Office. Because, and as I mentioned to  
18 you, there's always an example to counteract.

19           Last year or the year before in the County of  
20 Santa Barbara which was a public facility, a public land  
21 operated system, and I think there's always a distinction  
22 between public and private; they came to us and said, we  
23 need to basically get some amendments and revisions to  
24 our permit to allow a particular technique to expand our  
25 landfill, because if we don't, that is going to force us

1 to go out and lose our recycling programs that we've  
2 built.

3 So there are these other kind of anomalies out  
4 there that we are confronted with. So if you look at how  
5 we construct, implement some of the recommendations,  
6 guidance in terms of discretion or flexibility or  
7 exceptions I think hopefully would be something that I'll  
8 look forward for guidance both from the Auditor's Office  
9 as well as some of the people in the audience.

10 Thank you.

11 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.  
12 Eaton.

13 Senator Roberti.

14 BOARD MEMBER ROBERTI: Yeah, Madam Chair.

15 First, I think it's an excellent audit and one which --

16 UNIDENTIFIED SPEAKER: We can't hear.

17 BOARD MEMBER ROBERTI: Excuse me.

18 BOARD MEMBER EATON: I think they said hear  
19 hear, but I'm not sure.

20 BOARD MEMBER ROBERTI: No, I don't think so.

21 First let me state that I think it's an  
22 excellent audit. And I don't view it as a, either  
23 remotely as a condemnation of the Board or the Board's  
24 past actions, but one in which your friends are your  
25 critics; because your critics keep you alert and help you

1 reform to what the original intention of the legislation  
2 and the pieces of the legislation that authorized the  
3 establishment of this Board.

4 I originally was chagrined when I saw the first  
5 legislative hearing authorizing the audit, because I  
6 thought it was, and I believe is the case, I might say  
7 that, an attempt to be very, very political on one  
8 specific landfill, Sunshine Canyon in Los Angeles.

9 However, I am happy that the Auditor did not  
10 take political instructions, but looked as an overview on  
11 the whole operation of the Board, which is terribly  
12 necessary.

13 So let me just say in general before I get to  
14 the specific item that we're talking about; it's an  
15 excellent item, it is well written, it is thoughtful, it  
16 is not condemnatory, and it is a document which calls us  
17 to review our actions in the light of the original  
18 purposes of the Board.

19 With that in mind, the point we're discussing  
20 right now, it just highlights all that. My best  
21 recollection of 939 and the original Solid Waste  
22 Management Act which preceded it was to, among, first  
23 among everything, was to reduce the dependence on  
24 landfills.

25 Now that is not to say that every decision that

1 this Board has made authorizing landfills, even a mega  
2 landfill has been wrong. That certainly hasn't been the  
3 case. And we have had to make decisions, I myself, based  
4 on the information that's before us.

5 But I think the Auditor has called us to seek  
6 out, on our own initiative where we can, and certainly  
7 through legislation where we don't have that power, to  
8 look at the whole general capacity and need for landfills  
9 in that, in this state. That at the bottom is what we're  
10 about. That's number one. That's number one. That's  
11 why we have a Solid Waste Management Act. That's why we  
12 had 939. That predates even our concerns over  
13 recycling. And that is the reduction of landfill space.

14 Now, how can we do that if we don't have even  
15 adequate documentation as to what the capacity and the  
16 necessity for that capacity is in the state.

17 I would remind the Board members who were here  
18 two years ago that I originally was astounded when we  
19 were having applications to permit landfills. I think we  
20 had one for 600 years. I don't think, Madam Chair you  
21 were here. 600 years. As if we could even make a  
22 determination of what's going to happen in the next  
23 millenium.

24 That obviously wasn't based on any documentation  
25 on need, it was just that you have a rote way of doing

1 things over and over and over again that we don't call  
2 ourselves to reform.

3           And I was informed, and I think rightly by  
4 counsel, that I can't, I couldn't take into consideration  
5 the amount of time that was involved. So when I had to  
6 vote on one of these permits I wanted an asterisk next to  
7 it saying that, you know, I'm voting based on what I'm  
8 allowed to take into consideration. But it's just an  
9 indication of how remote we are from having capacity and  
10 the need for the capacity guide our decisions, because we  
11 don't have the information.

12           So I think this first item we're discussing is  
13 an excellent one to start with because it gets to the  
14 bottom line of what this Board is all about, and we  
15 cannot discuss solid waste management and the creation of  
16 landfills unless we have information as to the need for  
17 those landfills and the various capacities that were  
18 called upon.

19           So it's an excellent audit and I'm going to use  
20 it as a guiding document for some of my further  
21 discussions while I'm on the Board.

22           BOARD CHAIR MOULTON-PATTERSON: Thank you,  
23 Senator Roberti. I think you can move on to the next  
24 one.

25           MR. DE BIE: Moving on with the next topic,

1 environmental justice on page 32-5. The audit report has  
2 two recommendations.

3           One is, again to, as with capacity, to look  
4 towards utilizing environmental justice in the permit  
5 decision-making process. And associated with that is  
6 continued working with Cal EPA in the effort to address  
7 environmental justice and, if necessary, seek legislation  
8 to allow the Board to utilize environmental justice in  
9 making the decisions on permits.

10           The second recommendation was to track  
11 demographic information relative to solid waste  
12 facilities.

13           Staff's analysis basically reports what the  
14 Board is currently doing in the environmental justice  
15 area, and the direction that the Board had given staff  
16 prior to the release of the audit. And since then staff  
17 plans to come back to the Board in March with an update  
18 on where they are in developing maps that will be able to  
19 co-relate locations of solid waste facilities with low  
20 income minority populations.

21           We continue working with Cal EPA and the  
22 mandates in SP 115 as well as SP 89. And then we also  
23 included the information on what the Board has been  
24 involved with previously relative to environmental  
25 justice, including conducting several workshops in which



1 the LEAs and various industry representatives were in  
2 attendance.

3 BOARD CHAIR MOULTON-PATTERSON: Thank you.

4 Mr. Medina.

5 BOARD MEMBER MEDINA: Thank you, Madam Chair. I  
6 just wanted to say that I strongly supported the  
7 recommendation that has been made by the State Auditors.  
8 And I also feel that audits serve a very important  
9 purpose of accountability or oversight, particularly the  
10 recommendations that are made are really important. And  
11 I must say that as a new Board member, for myself the  
12 audits serve a very important purpose, as it must to  
13 other members of this Board who are new, in that it gives  
14 us an overview of some of the areas that this agency  
15 needs improvement in, and also the areas that we need to  
16 improve.

17 In regard to environmental issues; and again,  
18 low income communities have been heavily impacted with  
19 regard to, and I saw this as the director of Caltrans  
20 where the freeways were run through the minority low  
21 income communities, and certainly you can see this in the  
22 siting of a lot of the landfills.

23 So this is an area that I myself am very  
24 sensitive to, I want to be very active in this. And I  
25 know that some, if not all the Board members share these

1 concerns, and we've already started to look very closely  
2 at this area.

3           And I think also that the increase in  
4 representation in various communities as the state  
5 diversity increases and its demographics change, that has  
6 also given a voice to representation at all levels, be it  
7 local government, state government. And again, they look  
8 back to this Board to see how, you know, we carry out our  
9 duties in overseeing existing policies in that area also,  
10 we're making an effort to review and revise policies if  
11 necessary.

12           BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.  
13 Medina.

14           Mr. Paparian.

15           BOARD MEMBER PAPARIAN: I wonder if I can ask  
16 the auditors a question about this one. And that is  
17 there's been a presentation by our staff and written  
18 information suggesting that we are planning to track  
19 demographic information which was one of the  
20 recommendations in the audit.

21           Do you feel like what the staff is describing in  
22 terms of what we're going to do addresses that  
23 recommendation? Or were you thinking there would be more  
24 there?

25           MS. QUARLES: My understanding is that Cal EPA

1 would be providing some guidance on specific components  
2 of what the Board should be tracking. Again, our concern  
3 is that because the Board and the EPA received federal  
4 funding, that they comply with the environmental justice  
5 laws that have been put in place by the federal  
6 government. Cal EPA, again, my understanding is that  
7 they would be provided that direction.

8 BOARD MEMBER ROBERTI: Do we receive federal  
9 funding? It came up with me in relation to another  
10 issue. Maybe we do it through some contractual  
11 arrangements, maybe we can get help on this.

12 CHIEF DEPUTY DIRECTOR FISH: We have applied  
13 for a federal grant in the past, but they're for specific  
14 purposes. We don't get federal funding on an ongoing  
15 basis.

16 BOARD MEMBER ROBERTI: Do we have any federal  
17 funding right now?

18 CHIEF DEPUTY DIRECTOR FISH: Within our, in our  
19 market development program I believe we have a grant that  
20 has been extended where it's a jobs to work grant. And I  
21 believe that's the only federal funding that we have at  
22 this point in time.

23 BOARD MEMBER ROBERTI: I'm just interested, A,  
24 of that issue, and B, as to what specific guidelines or  
25 guideposts we have.

1           I suspect that there are state laws as well that  
2 would direct our attention to environmental justice, even  
3 in the federal.

4           MS. QUARLES: Yes, it's a larger issue, and it  
5 affects Cal EPA and all the agencies that fall within.

6           BOARD CHAIR MOULTON-PATTERSON: Thank you.

7           BOARD MEMBER EATON: So this not only, you're  
8 not only saying federal, you're saying also the state, a  
9 few of the others which have recently come to the audit,  
10 because it seems here, just for the record I just want to  
11 establish that you're talking about federal as well as  
12 any state applicable laws on the environmental justice,  
13 correct?

14          MS. QUARLES: That's correct.

15          BOARD MEMBER EATON: Thank you.

16          INTERIM EXECUTIVE DIRECTOR BRUCE: I just want  
17 to also mention that as part of the overall Cal EPA  
18 strategic region that we are participating in as part of  
19 our strategic plan, this is an area that we will be  
20 addressing in that mechanism.

21          BOARD MEMBER MEDINA: Just one further word,  
22 Madam Chair.

23          BOARD CHAIR MOULTON-PATTERSON: Yes.

24          BOARD MEMBER MEDINA: And I just wanted to make  
25 sure that environmental justice issues are not just

1 limited to the siting of landfills, but to all aspects of  
2 solid waste management, including landfill siting in the  
3 workforce, transportation of the solid waste to certain  
4 communities. And there's a whole number of other issues  
5 related to environmental justice.

6 BOARD CHAIR MOULTON-PATTERSON: Thank you. As  
7 we move on to long term violation procedures, as you know  
8 this is going to be discussed later this afternoon and,  
9 you know, I might add that the Board has, we're a  
10 relatively new Board and we are, we have chosen to look  
11 at all of our policies, and we will be looking at this  
12 later this afternoon.

13 But Ms. Nauman, you want to briefly go over that  
14 please?

15 DEPUTY DIRECTOR NAUMAN: Sure.

16 MR. DE BIE: Very quickly on the long term  
17 violation procedures starting on 32-6 and continuing onto  
18 32-7, the auditor's recommendation is to discontinue the  
19 use of the policy. But if the Board believes that the  
20 policy is necessary, it should request the legislature to  
21 grant it authority to issue permits, long term violations  
22 under defined circumstances.

23 As you have pointed out, chairperson  
24 Moulton-Patterson, this is an item on today's calendar,  
25 item 21, so I think we'll defer our staff analysis for

1 that item.

2 BOARD CHAIR MOULTON-PATTERSON: Okay. Fine.

3 MR. DE BIE: Moving on to permit and enforcement  
4 policy.

5 BOARD MEMBER JONES: Can I ask a question?

6 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

7 BOARD MEMBER JONES: In the Auditor's report you  
8 talk about the long term gas violation issue, that we may  
9 be in violation of state law. I'm wondering how you came  
10 to that conclusion?

11 MS. QUARLES: Well state law specifically  
12 requires that the Board has to object to provisions of a  
13 permit revision that are not consistent with state  
14 minimum standards. And if there are long term violations  
15 that are not consistent with your minimum standards, then  
16 that should be objected to.

17 We also, I'd like to bring to your attention, we  
18 also recognize that it may take a long period of time to  
19 correct these type violations which is why we added the  
20 second sentence that if you've been, if you believe it's  
21 necessary to have some type of provision that will allow  
22 the operators to take a little bit more time to resolve  
23 these long term violations, then you should seek that  
24 type of legislation to allow you to have that ability.

25 BOARD CHAIR MOULTON-PATTERSON: Could you state

1 your name for the record?

2 MS. QUARLES: I'm sorry. My name is Joanne  
3 Quarles, real estate audits, Auditor's Office.

4 BOARD MEMBER JONES: On this issue, because it's  
5 an issue that is discussed quite a bit here. 20919.5  
6 which is a violation of this policy that is most normally  
7 used because it's not a, it identifies five to fifteen  
8 percent gas violation. And I'm not talking, you know,  
9 we've got local jurisdictions that could be a long-term  
10 violator because they haven't fully funded closure post  
11 closure which keeps their permits from coming forward.  
12 We have a lot of other issues that happen through  
13 underfunded local government type facilities.

14 But long term gas where there's a five percent  
15 to a fifteen percent hit under 20919.5, that statute  
16 actually says, while it identifies the problem, it also  
17 identifies what they need to do. And the operators have  
18 to get it in the record right away, notify the LEA, and  
19 come up with a plan.

20 And what I'm wondering is, gas, and I don't know  
21 who you had your discussions with on this issue, but gas  
22 is something that is generated by any decomposing waste,  
23 and it takes, it is not something that turns on and off  
24 in a landfill.

25 But if a jurisdiction has complied with 20919.5

1 and are in the process of monitoring to find out what the  
2 extent of the problem is so that they can get a better  
3 handle on how to remediate it at some point, then it  
4 appears to me that they have complied with that part of  
5 the law, because we are looking at a long period of  
6 time. And when I say a long period of time, I don't mean  
7 months, I mean years and years.

8           And I'm wondering if it is, if it makes sense  
9 that a facility be held to conditions when it originally  
10 got its permit, and not take into consideration changes  
11 in the local jurisdiction where new subdivisions are  
12 built, new industry goes in, and the only way to handle  
13 that part of the waste stream that is not recovered for  
14 recycling is to go to a landfill. Where would that  
15 material go otherwise?

16           I guess it's two questions. Because one, I  
17 think that they are in compliance with the law, and I  
18 don't think they're in compliance if they refuse to  
19 address the issue. But if they've accepted the  
20 responsibility to start planning on how to deal with that  
21 gas, I mean the law is pretty clear. Immediately take  
22 all necessary steps to ensure protection of human health  
23 and safety within seven days of detection, placing the  
24 operating record for methane levels.

25           Within sixty days implement a remediation plan



1 for the release, place a copy in the operating record.

2 The plan should describe the nature and extent of the

3 problem, and the proposed remedy.

4 And I think that it's critical because we have a

5 different point of view on this issue at this Board, but

6 I think we've got to look at the long-term effect to

7 local government, to the citizens in the State of

8 California. Because it takes time to understand the

9 extent the problem.

10 And I think that 20919.5 took that into

11 consideration when it was written. Because it's very

12 different than the one above it, 919, which was an

13 immediate threat.

14 MS. QUARLES: I think part the discrepancy that

15 we may be discussing is that state law is specific as to

16 the action that the Board should be taking when it's

17 reviewing a permit revision or a new permit.

18 I think what you're referring to 20919.5 is a

19 state regulation that has been put in place, and there

20 apparently is a disconnect between the regulation and the

21 state law because the state law is very clear.

22 What we are proposing is that, and we recognize

23 that it may take a long time for these type situations to

24 be resolved, is that if you believe that you need that

25 additional time, that you need to seek legislation to be

1 able to have the authority to do that.

2 BOARD CHAIR MOULTON-PATTERSON: Thank you.

3 MR. DE BIE: The next topic area is permit  
4 enforcement policy 32-7. The recommendation is to  
5 discontinue the 1990 enforcement policy that allows  
6 operators that violate the terms and conditions of their  
7 permits without first obtaining a permit revision.

8 Staff in their analysis indicate that the Board  
9 directed us, as early as August of 2000, to address this  
10 issue. And since that time staff has been conducting a  
11 series of meetings with stakeholders to collect their  
12 input, their scheduling. We're currently scheduling a  
13 larger group meeting with all of the stakeholders to  
14 discuss and develop, hopefully develop some options for  
15 the Board relative to this policy.

16 Staff analysis also includes just some  
17 discussion of the policy itself, and the rationale that  
18 was utilized to support the policy, you know, back in  
19 1990.

20 So it sort of gives you some foreshadowing of  
21 some of the information that will be presented to you.

22 Currently we're scheduled to come back to the  
23 Board in March of this year with a report.

24 BOARD CHAIR MOULTON-PATTERSON: I just wanted to  
25 make sure, it's March you'll be back to us?

1           MR. DE BIE:   March.

2           BOARD CHAIR MOULTON-PATTERSON:   Okay.   Go ahead.

3           MR. DE BIE:   The next topic area is eighteen  
4 month inspections, 32-9 of the agenda item.   And the  
5 recommendation is to continue to improve its, the Board's  
6 performance in conducting landfill inspections every  
7 eighteen months as state law requires.

8           Staff's analysis includes a description of why  
9 there were some gaps in years past relative to the  
10 eighteen month inspection.   Much of the delays staff  
11 attribute to scheduling of eighteen months based on an  
12 eighteen month's cycle.   So in some situations a landfill  
13 might have been inspected early in the eighteen month's  
14 cycle, and then again at the end of the next eighteen  
15 month's cycle, therefore eighteen times two or almost  
16 three years would have passed between inspections.

17          There were also situations where, timing wise, a  
18 permit may be, may have been scheduled to come up in  
19 front of the Board, and to reduce some duplication and  
20 burden on the operator, inspections were scheduled to  
21 coincide with a pre-permit inspection and the eighteen  
22 month inspection.

23          A little over two years ago the Board staff  
24 shifted in their procedure in scheduling eighteen months  
25 inspections.   We now have a procedure in place where when

1 a landfill is inspected eighteen months, plus or minus a  
2 month or two to adjust for seasonal variation from the  
3 last time it was inspected. So we no longer use the  
4 eighteen month cycle procedure.

5 So I think the recommendation points to Board's  
6 staff continuing to operate in that way and improve in  
7 that area.

8 BOARD CHAIR MOULTON-PATTERSON: I might just  
9 ask, do we have enough staff? I mean that isn't the  
10 problem, is it?

11 MR. DE BIE: We do have enough staff, yes,  
12 currently.

13 BOARD CHAIR MOULTON-PATTERSON: And it used to  
14 be --

15 MR. DE BIE: Except for a few staff that are out  
16 on leave, but we get by. I've done a few inspections, or  
17 at least one.

18 BOARD CHAIR MOULTON-PATTERSON: So just for my  
19 understanding, it used to be annual inspections and  
20 then --

21 MR. DE BIE: Way back when 939 first passed it  
22 was annual inspections, and then it changed to eighteen  
23 month. And actually before it was annual inspections for  
24 all facilities, and then it changed to eighteen month  
25 just for landfill. And so staff numbers shifted in

1 corresponding to the mandate too, and that might have  
2 contributed to some inspections being missed as staff  
3 numbers were reduced.

4 BOARD CHAIR MOULTON-PATTERSON: Okay.

5 MR. DE BIE: But I think we're well staffed at  
6 this time.

7 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank  
8 you. Mr. Paparian has a question.

9 BOARD MEMBER PAPARIAN: I just want to make sure  
10 I understand, you're saying thirty days within an  
11 eighteen month time period you're making the inspection?  
12 I'm not sure I understand.

13 MR. DE BIE: We have a schedule where eighteen  
14 months from the last inspection we will be inspecting  
15 that facility again. But we do, in that procedure we do  
16 let that date slide plus or minus thirty, sixty days with  
17 a, with, because we wanted to adjust over time the  
18 seasons that we do the inspections.

19 If we do it every eighteen months we'll see it  
20 in only two, basically two seasons, we want to see it,  
21 try to see it in all four. So by fudging the eighteen  
22 months a month or two this way or that way, eventually we  
23 get to see the facility in the different, in the four  
24 seasons.

25 BOARD MEMBER PAPARIAN: If there's a reason to

1 do that, well I think the auditor points out that the  
2 state law says we have a process where we have to do it  
3 every eighteen months, that was their point. And as I  
4 recall the law, it says every eighteen months.

5           So if there's reason to do it slightly  
6 differently as you describe, we may need to seek a  
7 legislative change. Because the law seems to me very  
8 clear, it says the Board shall conduct at least one  
9 inspection every eighteen months of each solid waste  
10 landfill and transformation facility in the state. At  
11 least one inspection every eighteen months.

12           MR. DE BIE: That's what it reads. And staff  
13 can certainly, you know, implement a program that takes  
14 the plain reading of the requirement and implement that  
15 program. But I think right now, today I would champion  
16 trying to have some flexibility for the reasons that I  
17 indicated in trying to see facilities in various  
18 situations, winter, summer, spring, fall.

19           So perhaps we could have staff explore some  
20 options in modifying that particular mandate to allow  
21 some flexibility.

22           BOARD MEMBER PAPARIAN: This also, I mean the  
23 mandate also allows for additional inspections within the  
24 eighteen month period, it does not have to be limited to  
25 one.

1           MR. DE BIE: It does, and I would predict that  
2 that would require additional staff resources if we  
3 wanted to reduce the timeframes, the eighteen month  
4 timeframe.

5           BOARD CHAIR MOULTON-PATTERSON: Senator Roberti.

6           BOARD MEMBER ROBERTI: Mr. de Bie, if I, do I  
7 take it that what you're saying is that we average out  
8 eighteen months when we take into consideration the  
9 summer inspection, winter inspection?

10          MR. DE BIE: Yeah, sometimes we're early,  
11 sometimes we are a little late, but yes, we do average  
12 out eighteen months.

13          BOARD MEMBER PAPARIAN: I guess it's something  
14 on other items we have discussed where I remember Lyle  
15 Adakis, that is something that just came to my mind,  
16 where we were very concerned that we have a review in the  
17 summertime where the different breezes were much  
18 stronger.

19                It does strike me on this one that if we can  
20 show that we average out to eighteen months, I tend to  
21 think that probably is keeping within the law, although I  
22 wouldn't want to bet the mortgage on it. But I think  
23 that is a reasonable argument. And maybe what we have to  
24 do in this case is to get either legislative relief or  
25 legislative clarification.

1               BOARD CHAIR MOULTON-PATTERSON: Thank you.

2               BOARD MEMBER EATON: May I just ask a quick  
3 question? What is our tracking system? Do we have a  
4 list of all landfills, you know, kind of, and then it  
5 comes up? Is there like a tickler file that says, you  
6 know, we get within a six month timeframe and we have to  
7 look at it? Or what is our internal process?

8               MR. DE BIE: This mandate is just for the active  
9 landfills, so we have a good list of those, we know which  
10 ones those are. Currently staff utilizes a spreadsheet  
11 that's in a shared server, in a shared file form. And  
12 the practice is for them to record their latest  
13 inspection, and then the spreadsheet will calculate when  
14 the next eighteen months inspection is due. And then  
15 staff is required to put in an estimate date on when they  
16 will actually make that inspection, either early, late,  
17 or right on the mark. And then their supervisor will  
18 track that to ensure that they're, you know, keeping that  
19 current and making sure that, you know, that they keep to  
20 that schedule.

21              BOARD MEMBER EATON: That's something we've  
22 implemented recently.

23              MR. DE BIE: Within the last two years, yes.

24              BOARD MEMBER EATON: And within the last two years  
25 have we had any of the problems that were raised in the



1 report as a result of that tracking system? I mean  
2 there's always going to be a problem here or there, I  
3 understand that.

4 But the point I'm trying to get at is sometimes  
5 we have, from time to time we get reports from the Board  
6 members from the Deputy Director, the Deputy Executive  
7 Director as to the status of something like and  
8 enforcement actions, and we always get long term  
9 violations, for instance, you know, every year we get a  
10 report. And is it something we need to do, or is it  
11 something that the system now is in place and therefore  
12 can be handled Internally.

13 And I think that goes to some of the comments  
14 you were talking about the flexibility. If we see  
15 something that's popping up, it's late and the Board can  
16 make a conscious decision irrespective of whether or not  
17 it's a little late or not late, and I'm just trying to  
18 find a tracking system.

19 MS. NAUMAN: Mr. Eaton, from a management  
20 perspective, I'm confident that the system that is in  
21 place is keeping on us on track to do these inspections.  
22 And I think the important point the recommendation and  
23 the discussion is the recognition that there were some  
24 problems in the past, those problems have been corrected,  
25 systems are in place to keep us on track, and the

1 performance to date shows that that system is working  
2 effectively for us.

3 And you know, I do monitor it with Mark on a  
4 regular basis, and if we see any problems that we think  
5 the Board needs to address we'll bring those to you.

6 BOARD MEMBER EATON: And I was just also very  
7 curious, you mentioned active landfills, was there a  
8 distinction between active and non-active and how does, I  
9 mean you have a list of 'em. It only applies to active  
10 landfills, the inspection?

11 MR. DE BIE: Right. The statute includes terms  
12 that are defined eventually in statute or reg as being  
13 the active permitted ones. You know, the Board I think  
14 is aware that the LEAs are inspecting all solid waste  
15 facilities no matter what their status on a regular  
16 basis, active ones on a monthly basis, closed landfills  
17 on a quarterly basis. And staff process those inspection  
18 reports and keep apprised of what's occurring at those  
19 facilities between the eighteen months.

20 Also the focus of the eighteen month, if you  
21 look at the statutory language, seems to be, or one of  
22 the foci of the inspection is to assist in evaluating the  
23 LEA. And so there's many ways of doing that, but  
24 certainly we utilize the eighteen month to help  
25 recalibrate LEAs on inspection type things.

1               BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

2               BOARD MEMBER JONES: Well I think that as a  
3 former operator I never minded seeing the state  
4 inspectors coming into our facilities once a year, along  
5 with our LEA, to get a good handle on what we were  
6 actually doing. It always made sense to me. Contrary to  
7 some, I think it's good to have oversight like that, and  
8 also the industry thinks it's good to have oversight like  
9 that.

10              And I think that some of the issues brought up  
11 in the audit report dealing with the LEAs; 1220 made it  
12 very clear that there's a delineation of responsibility  
13 and that LEAs were going to be able to send us permits  
14 and information that they deemed complete.

15              And I think that the inspections of solid waste  
16 facility landfills by LEAs is done right and it's done  
17 good in most places.

18              I think it's our job to make sure that those  
19 LEAs that aren't performing their job accurately or  
20 correctly or to our standards need to be removed as  
21 LEAs. And if that means that the inspections, because I  
22 read this that it's within eighteen months, and I would  
23 prefer that they happen within the eighteen months.

24              Because I think if there is any shadow or any  
25 hint that there are improprieties, or that the ability of

1 the LEAs or the ability of the State Board is in question  
2 because maybe they don't view the, our inspections,  
3 accurately that we're doing our job, then this needs to  
4 be something we really need to talk about to figure out  
5 how to connect the dots to take care of a few of the  
6 other issues within the state audit recommendations to  
7 give a comfort level.

8           And at the same time I think, hopefully when  
9 reports come back good saying that LEAs and operators are  
10 doing their job, that we acknowledge that. That we say,  
11 you know, the state is in good hands with the LEAs.

12           But I think we really need to have a, an item or  
13 a working group, Madam Chair or something, or else  
14 discussions within the Board offices on how we can tie a  
15 couple of these dots together to be able to take care of  
16 some of these issues that some may feel aren't being  
17 dealt with properly so that citizens in the State of  
18 California have a sense that, in fact, their public  
19 health and safety and the environment are being  
20 protected. I happen to think they are. I think the LEAs  
21 are doing a great job by and large.

22           BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.  
23 Jones.

24           Senator Roberti.

25           BOARD MEMBER ROBERTI: If our staff could inform

1 me for my own information; when we make an inspection,  
2 how much prior warning, if any, does the landfill  
3 operator or whoever receive?

4 MR. DE BIE: The direction to the staff is to  
5 minimize any warning ahead of time. With logistics and  
6 that sort of thing sometimes the operator needs to be  
7 noticed, you know, 24 hours in advance, that sort of  
8 thing. There is some variation. But we try to make  
9 these inspections basically surprise inspections.

10 We do try to work with the LEA's schedule in  
11 having our inspection coincide with their regular monthly  
12 inspection. And I think many LEAs utilize a sort of  
13 surprise inspection technique for doing their regular  
14 inspections.

15 BOARD MEMBER ROBERTI: But I take it the LEAs  
16 have different modes of operation; some may give prior  
17 warning, others may have a surprise inspection, or are  
18 they all generally a surprise, on their monthly  
19 inspections?

20 MR. DE BIE: On their monthly inspection there's  
21 some variation. You know, I know in the past there was  
22 at least one jurisdiction that would, that had a  
23 schedule, basically a posted schedule of when they would  
24 be at the various sites and some operators could set  
25 their clocks by it. And in other jurisdictions they made

1 an effort to vary the daytime, etcetera, when they would  
2 visit the facilities.

3 BOARD MEMBER ROBERTI: So I would tend to think  
4 if there's a problem, and I'm surmising that there is,  
5 it's not from Board inspection, but the problem may arise  
6 from the LEAs. And that gets to an issue which I think  
7 the audit addressed in a number of ways and which we've  
8 discussed on the Board as well; and that is not that the  
9 LEAs are not doing their job, but the LEAs are doing  
10 their job within the context that they have a conflict of  
11 interest. And as anybody who has a conflict of interest,  
12 you have two masters to serve.

13 The master to serve, number one, is the  
14 jurisdiction of which you are a part, almost a  
15 co-extensive entity at times.

16 Master number two is the health, safety,  
17 environmental purposes of the Act that they're making an  
18 inspection for. And that's a conflict.

19 And that isn't to say when the LEAs come up here  
20 and they take offense at the various suggestions that  
21 this may happen, nobody is castigating them, they are  
22 trying to do what they can do within a very confused and  
23 complex system in which we have told them that they have  
24 two masters to serve. And they are doing the best within  
25 that.

1           But I truly believe, and it's one of the areas  
2   in which I think the audit has been most helpful,  
3   certainly to me in trying to formulate my ideas on this  
4   matter, and that is, you know, the fact that our LEA  
5   system is not geared toward maximizing protection of the  
6   health, safety, and environment of the public. And that  
7   is not because the LEAs are ill-intentioned, ill-willed,  
8   or incompetent. All those things would be incorrect. It  
9   is because we have given them two masters to serve and  
10  it's impossible, I think.

11           In this one small, even in this one small area  
12  are we going to have surprise inspections? What does an  
13  LEA do who is co-extensive, in effect, with the operator  
14  of the landfill? Well, do I make it a surprise or do I,  
15  you know, tell my other obligation, because they have an  
16  obligation to the county that they work for, the city  
17  that they work for, or the operator with which they are  
18  co-extensive, to report to them, that's their job. Do I  
19  tell them? Or do I really make it a surprise?

20           This system is fraught with danger because it's  
21  a built-in conflict. And if there's any one area where I  
22  think this audit has asked us to take a fresh look it's  
23  in this area, and I think we should.

24           BOARD CHAIR MOULTON-PATTERSON: Let's go right  
25  into the LEA enforcement orders part.

1           Thank you, Senator Roberti.

2           MR. DE BIE: The LEA enforcement orders topic is  
3 starting on 32-10. In this area there's three  
4 recommendations in the report.

5           One is to continue efforts to modify the  
6 enforcement regulations to maintain the tracking and  
7 compliance with notice and orders.

8           The second one is to ensure that LEAs require  
9 operators to comply with notice and orders by the dates  
10 specified in the order, and initial penalties with those  
11 that do not comply.

12          And then the third recommendation was to seek  
13 legislation to streamline the current process for  
14 Imposing civil penalties.

15          Staff analysis starts off by discussing some of  
16 the numbers that were in the audit. And a conclusion  
17 that staff has drawn, and I think I'm not going to put  
18 words in the auditor's mouth, but I think there was a  
19 disagreement on how compliance is viewed relative to  
20 these enforcement orders.

21          Staff, because of the process in place, makes a  
22 distinction between compliance with an order and  
23 compliance at the facility. The order may outline  
24 certain tasks that need to be accomplished in order to  
25 gain compliance at the facility; and so an operator may



1 be out of compliance with an order, but the facility may  
2 be in compliance with those issues outlined in the order,  
3 and vice versa.

4           So when staff looked at the orders that were  
5 provided to them from the auditor's staff, and then  
6 looked at the inspection record, we determined that for  
7 the 64 that were enumerated, only eight facilities were,  
8 at the time of our analysis, which was consistent with or  
9 soon after the auditor's analysis, that only eight  
10 facilities, facilities were out of compliance.

11           We struggle with being able to verify whether or  
12 not those facility operators are in compliance or not  
13 with their enforcement orders because currently the LEAs  
14 do not, in a practice, in a comprehensive way provide  
15 Board staff with a status of enforcement orders. Some  
16 do, some don't.

17           So we're, we don't have the ability right now to  
18 thoroughly track current compliance status of enforcement  
19 orders. So if you go to our database you'll see many  
20 blanks in terms of when compliance with that order was  
21 achieved, and I think that's part of what the auditor's  
22 report reflects.

23           The enforcement regulations will require  
24 reporting of the status of those enforcement orders to  
25 Board staff. So Board staff are very optimistic that

1 into the future, you know, we'll be able to track those  
2 enforcement orders and verify whether or not they're  
3 still, if there is compliance or not with the actual  
4 enforcement orders.

5 BOARD CHAIR MOULTON-PATTERSON: So you're saying  
6 that we haven't been able to track them in the past  
7 as well as you'd like to, but we have a process to do it?

8 MR. DE BIE: We believe we now have regulatory  
9 authority to require reporting of the LEAs, which we  
10 lacked before, so I think we can get consistent  
11 reporting. Whereas before it was sort of voluntary and  
12 it was hit or miss, but now I think once those regs are  
13 fully adopted and approved, that we'll be able to improve  
14 in this area.

15 BOARD CHAIR MOULTON-PATTERSON: And when do we  
16 plan on adopting them?

17 MR. DE BIE: The Board acted to adopt the regs,  
18 and the last I heard they were being reviewed by legal.  
19 And I don't know if they were formally submitted for  
20 final approval from the Office of Administrative Law.

21 BOARD CHAIR MOULTON-PATTERSON: I think that's  
22 something, you know, we all want to see happen.

23 Mr. Paparian.

24 BOARD MEMBER PAPARIAN: This is the area in the  
25 audit that was most troubling to me and the one where I

1 think we really need to spend a lot of time thinking  
2 about how we're going to deal with this.

3 I know that the LEAs, I know many of the  
4 outstanding LEAs and the vast majority of LEAs are doing  
5 an outstanding job, and many of those outstanding LEAs  
6 are here in this room as I look around the room right  
7 now.

8 But the audit did point out that in some  
9 jurisdictions local governments are getting twelve to  
10 fifteen percent of their net incomes from landfill  
11 revenues. And in fact, just yesterday by a three-three  
12 vote, this Board allowed a landfill to go forward in one  
13 of those jurisdictions that's mentioned in the report.

14 While I don't want to rehash what we did  
15 yesterday; what I'm troubled by with what we did  
16 yesterday is that if the operator there strictly adheres  
17 to the conditions of that permit, the testimony we had  
18 from their representative was that we can expect them to  
19 violate state minimum standards in the future. And the  
20 only way that they're going to avoid violating state  
21 minimum standards is by adopting some control mechanisms  
22 which are outside of the conditions of that permit.

23 I have to wonder whether, if this were a private  
24 landfill operator, especially a private landfill operator  
25 in a different jurisdiction, whether the conditions of

1 the permit would have required those measures to be  
2 adopted that would assure that state minimum standards  
3 are not violated in the future.

4 Also troubling to me is a communication that we  
5 have from a Northern California LEA which says that many  
6 LEAs from northern counties perceive that they are indeed  
7 subservient to other departments within their  
8 jurisdiction.

9 For example, Public Works Departments in  
10 Northern California counties most often administer and in  
11 some cases operate publicly-owned solid waste  
12 facilities. Unfortunately, these departments do not  
13 always readily comply with correction notices issued by  
14 the LEA for violations. This is particularly true when  
15 cash expenditures might be required to correct the  
16 violation.

17 The letter goes on to talk about some possible  
18 remedies to what is described as the "intimidating  
19 environment in which we work."

20 This is, this is very deeply troubling to me.  
21 And then, you know, on top of this, when I look at the  
22 lists of violators of state minimum standards that I've  
23 now seen a couple times since I've been on the Board, I  
24 see that, by far the vast majority of them are  
25 publicly-owned facilities where the LEA is an employee of

1 the same jurisdiction that is on that list.

2 And it's gotten me wondering whether it's any  
3 more of a coincidence that the private operators don't  
4 seem to show up on that list, yet the publicly-owned  
5 facilities do.

6 So, you know, for all these reasons I think this  
7 is an area that we need to spend some time thinking  
8 about. We need to be thinking about what we can do to  
9 assure that the LEAs are able to carry out their jobs in  
10 a way that's not intimidating to them and just not, to  
11 either give the appearance or a reality of a conflict of  
12 interest as we have today.

13 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

14 BOARD MEMBER JONES: Who's the letter from?

15 BOARD MEMBER PAPARIAN: I'll show it to you.

16 BOARD MEMBER JONES: I think there's a couple of  
17 things. That if the facilities are on the long term  
18 violator list, then that means the LEA did its job and  
19 wrote them up and put them on the list. So if their  
20 counties were going to control them to not do it, they  
21 wouldn't be on the list. That list isn't generated  
22 because of state inspections, it's generated because of  
23 monthly LEA inspections. And so it kind of goes to the  
24 heart of the reason they're on there is because those  
25 LEAs are doing their job. We would never see them if, in

1 fact, they deferred to the Public Works Department in  
2 their county.

3 But I think one of the other things we have to  
4 look at is we've got an LEA Evaluation process that the  
5 Board voted on. And the way that the law was originally  
6 written, or the way that we treated LEAs was if they  
7 continually came to the Board for help, we somehow gave  
8 them a demerit that they really didn't understand their  
9 job.

10 We changed that about three or four years ago to  
11 say that if an LEA does come to the Board, so the Board  
12 staff could be a facilitator where they've got a public  
13 entity that is, or a private entity that's giving them a  
14 hard time or they need a little help, that they could  
15 come to the Board staff, get help in facilitating a  
16 remedy, and that that would actually go as a plus instead  
17 of a minus.

18 So we changed that whole perspective to give  
19 LEAs the opportunity to come to the Board. And we  
20 actually went a step further and said, "If we find out  
21 that there is this kind of conflict and you're not coming  
22 to the Board, that will go against you." That's an LEA  
23 policy on how we evaluate LEAs.

24 We talk about the long term gas and we talk  
25 about those kinds of long term facilities, and Mr.

1 Paparian brought up that we voted on it yesterday. We  
2 also voted on issuing loans to facilities. And it was, I  
3 think it was said that there was a pretty good facility  
4 that we needed to fund.

5           And that minimum standard violations at this  
6 facility include they're not cleaning it; they're not  
7 doing load checking; they're not removing the solid waste  
8 on time; they've got hazardous waste, liquid waste,  
9 special waste on the facility; they're not controlling  
10 litter; they've got problems with birds, vectors, and  
11 animals; they're not training their people; they don't  
12 have a maintenance program; they're not firefighting.  
13 But you know what else they don't have? Sanitary  
14 facilities. So this operator doesn't even put a portable  
15 toilet out there for his employees. That to me is -- and  
16 all those violations were written up.

17           That to me goes too the heart of, of, we're  
18 talking out of the both sides of our mouth. I mean this  
19 is somebody that -- it's unconscionable that somebody  
20 would not have sanitary facilities for people that are  
21 going through waste to sort it, that has hazardous waste  
22 on site and things like that, and we characterize that as  
23 a good facility.

24           And I think that we've got -- to think that a  
25 surprise, and I agree there are times when you need to do

1 surprise inspections on facilities, but LEAs don't  
2 necessarily just go into a facility once a month, they go  
3 into a facility for a lot of different reasons, one of  
4 'em is complaints.

5           People have a tendency to call their local Board  
6 of Supervisors or their local City Council member or the  
7 Head of Public Works and complain about the condition at  
8 a facility. And we don't have, I don't hear a lot of  
9 those things. I don't see a lot of those, maybe you all  
10 do.

11           But I think LEAs, and I think we have to, there  
12 is a inherent conflict, but I think the integrity of the  
13 program, and the integrity of the LEAs, and the fact that  
14 we authorize them to provide this service is important.  
15 And I think we need to do whatever we can to strengthen  
16 it so that we do away a lot with a lot of the, of this  
17 suspicion that somehow they're not doing their job.

18           BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.  
19 Jones, and we do have a number of LEAs that wish to  
20 address this today.

21           Let's move on to landfill closure plan.

22           MR. DE BIE: This topic starts on page 32-11 and  
23 continues on to the recommendations, there are three in  
24 this area.

25           One is to modify the regulations to prevent LEAs



1 from indefinitely extending deadlines for submitting  
2 closure plans.

3           Modify regulations to reestablish the Board's  
4 role as coordinating agency for the review and approval  
5 of closure plans.

6           And then also seek legislation to allow the  
7 Board to offer loans or grants to landfill operators in  
8 need of financial assistance to close landfills.

9           Staff analysis includes a discussion on  
10 trickling, which some of the recommendations allude to,  
11 as well as some of the issues that resulted in closure  
12 plans not being submitted in a timely fashion, such as  
13 early closures because of Subtitle D and other  
14 requirements. And then also includes a discussion on the  
15 fact that the Board is grappling with its role in terms  
16 of loans and grants relative to closure.

17           BOARD CHAIR MOULTON-PATTERSON: Thank you. I  
18 understand that our court reporter would like a ten  
19 minute break, and then we'll come right back.

20           Thank you.

21           (Thereupon there was a brief recess.)

22           BOARD CHAIR MOULTON-PATTERSON: We have a very  
23 long agenda today, so if I might ask, let's get back to  
24 order.

25           Mr. Eaton, ex-parte?

1               BOARD MEMBER EATON: Just one. Joe Montoya  
2 recommended that I read a particular book on  
3 environmental justice.

4               BOARD CHAIR MOULTON-PATTERSON: Okay. Thank  
5 you.

6               Mr. Jones?

7               BOARD MEMBER EATON: Public and Perils of  
8 Environmental Justice by Christopher Freeman.

9               BOARD MEMBER JONES: I actually have a copy of  
10 that book and would be more than happy to share it with  
11 you. And I've read it.

12              Ex-partes. Just actually just meet and greets  
13 with Chuck White, Denise Delmatier, Mark Aprea. I think  
14 that was it.

15              BOARD CHAIR MOULTON-PATTERSON: Thank you.

16              Mr. Medina.

17              BOARD MEMBER MEDINA: Joe Montoya I did not get  
18 to meet so I don't have any.

19              BOARD CHAIR MOULTON-PATTERSON: Okay. Mr.  
20 Paparian?

21              BOARD MEMBER PAPARIAN: None.

22              BOARD CHAIR MOULTON-PATTERSON: Senator Roberti?

23              BOARD MEMBER ROBERTI: No ex partes.

24              BOARD CHAIR MOULTON-PATTERSON: And I have none.

25              Okay. Have we finished with the landfill

1 closure plan review and delay, or were you in the middle  
2 of your report?

3 MR. DE BIE: No, I'm finished.

4 BOARD CHAIR MOULTON-PATTERSON: Any questions or  
5 comments on that? Okay. Seeing none, let's go on to  
6 landfill study.

7 MR. DE BIE: This is starting up again on page  
8 32-13, landfill study. The auditor recommendation is  
9 that we complete the study of the environmental impacts  
10 of landfills on the state, and the analysis indicates  
11 that we're on track relative to that study, and that we  
12 will continue working towards that through the policy  
13 office.

14 The next item deals with chapter two which is  
15 meeting the diversion mandates, so I'm going to defer to  
16 Mr. Schiavo on the recommendations and staff analysis on  
17 this one.

18 MR. SCHIAVO: Good morning, Pat Schiavo of the  
19 Diversion, Planning and Local Assistance Division. And  
20 number fifteen, the auditor's recommendation is to ensure  
21 that reported diversion rates are accurate.

22 The Board should modify it's regulations to  
23 require local governments to revise their base year  
24 figures at least every once every, at least every five  
25 years.

1           Then it should identify local governments that  
2   need to perform new base years solid waste generation  
3   studies and require them to do so.

4           And staff's comments on that are that based on  
5   PRC section 41770, 41825, the Board cannot require this  
6   to occur every five years. That during the buying and  
7   review process for the goal years the Board can and has,  
8   to the tune of 59 times, required jurisdictions to review  
9   base years. That jurisdictions can voluntarily do so,  
10   and have done so and will continue to.

11           Part of this will be taken up though in the SB  
12   2202 workshops that will be commencing tomorrow, and that  
13   could potentially be a recommendation that's carried  
14   forward.

15           BOARD CHAIR MOULTON-PATTERSON: Okay. Thank  
16   you, Mr. Schiavo.

17           BOARD MEMBER EATON: I just ask, does staff  
18   think it's a good idea, the recommendation, every five  
19   years?

20           MR. SCHIAVO: Based on -- it's a little more  
21   complicated than that. Because of the adjustment factors  
22   are now being used in a span of over a ten year period, I  
23   don't think it hurts. I don't think the adjustment  
24   factors were ever really intended to be used for over a  
25   five year period.

1               BOARD MEMBER EATON: So it would be a good idea  
2 then perhaps just to seek and follow that recommendation?

3               MR. SCHIAVO: As one alternative for how to look  
4 at things in the future. But again, as we go through the  
5 SB 2202 process, I'm sure there's going to be a lot of  
6 other good ideas.

7               BOARD CHAIR MOULTON-PATTERSON: Okay. Thank  
8 you. That was the last section before we go to the  
9 public comments.

10              Any other comments at this time or questions?

11              MR. SCHIAVO: I'm sorry, there is one more  
12 recommendation.

13              BOARD CHAIR MOULTON-PATTERSON: I'm sorry.

14              (Thereupon occurred simultaneous discussion.)

15              MR. SCHIAVO: Trying to get through the agenda.

16              To ensure that the Board provides consistent  
17 guidance to local governments on how to meet the state's  
18 diversion goals it should take these steps:

19              The first is decide on the appropriate types of  
20 materials local governments can count as diversion, and  
21 the methods to quantify those amounts. And then also  
22 seek concurrence from the legislature as to whether its  
23 approach meets the original intent of the mandate.

24              For the most part the material types are defined  
25 in statute, and that's how we've been working the process

1 to date. Over the last two years there's been some  
2 controversy regarding the interpretation of what we call  
3 Class II waste types.

4 Collectively, on the short-term we've been  
5 dealing with that administratively and it's been  
6 working. We've gotten through the '97, '98 and working  
7 through the 1999 process.

8 However, there is discussion on looking for long  
9 term remedies. And again that's been, you know, to the  
10 legislature over the last couple of years, and there's  
11 going to be some renewed discussion regarding that so --

12 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank  
13 you.

14 Questions? Comments? Anything final?

15 MS. NAUMAN: That really concludes the staff's  
16 overview of the recommendations. I know we have some  
17 speakers, and again we're looking for direction on the  
18 report.

19 BOARD CHAIR MOULTON-PATTERSON: Okay. We have  
20 quite a few speakers and so I had, we're really anxious  
21 to hear you but we ask that you be concise in your  
22 remarks.

23 We'll start with Grace Chan.

24 MS. CHAN: Good morning, Madam Chair, Board  
25 members.

1           My name is Grace Chan. I'm representing the  
2 Sanitation Districts of Los Angeles County. And we did  
3 send in a detailed letter on the landfill capacity issue,  
4 as Mr. Paparian, I think, succinctly referred to it as  
5 the needs test in the permitting process.

6           I would just like to say that we do strongly  
7 believe that capacity should be determined at the local  
8 level based on local needs and situation. That's, we  
9 believe that's consistent with AB 939 and also consistent  
10 with local land, local land use law.

11           With respect to other aspects of the report,  
12 we're, as the landfill operator we are, like you,  
13 stewards of the environment and public health and safety.  
14 And we take that responsibility very seriously and we  
15 work hard to comply with your regulations.

16           With respect to the long term violation policy,  
17 we do support continuation of that policy. We feel like  
18 the policy is good. It's protective of the environment  
19 and health and safety, while it does take into site  
20 specific conditions. Including, the public service that  
21 these facilities provide.

22           Though policy allows operators to demonstrate  
23 good faith to correct problems, and it gives them time to  
24 develop well into near solutions as opposed to a quick  
25 fix. It's consistent with, we believe with the

1 regulations, and also with other agencies' compliance  
2 programs.

3 Thank you very much.

4 BOARD CHAIR MOULTON-PATTERSON: Thank you, Ms.  
5 Chan. Rick Best.

6 BOARD MEMBER EATON: While Mr. Best is coming  
7 forward, I'd like for him to recognize the fact that he  
8 is not last for the first time, and rather he is going  
9 early on in the discussion.

10 MR. BEST: Yes. Thank you very much, Board  
11 members. My name is Rick Best, I'm with Californians  
12 Against Waste, and it's a pleasure to have the  
13 opportunity here to speak on the audit.

14 Like the comments of some of the Board members  
15 this morning, we were very appreciative that this audit  
16 has been done. I think it's very comprehensive, it looks  
17 at a lot of issues that I think have been on the front or  
18 back burners of a lot of us in terms of policy circles  
19 for the last several years. And I think it's a good  
20 opportunity to kind of pull those together into a single  
21 message in terms of how the Board can go forward, in  
22 reflecting the priorities that the Board has in terms of  
23 its responsibilities, make sure that the policies that  
24 the Board is implementing are reflective of that.

25 So I think it's appropriate. And while



1 certainly there are aspects of this report that are  
2 critical of the Board, I think it's, we certainly  
3 recognize that a lot of these things involve issues that,  
4 frankly, the Board hasn't had the authority to do.

5           And so I think it's appropriate for us to kind  
6 of take a look at what the Board is doing, what the Board  
7 should be doing, and kind of recraft the Board's program  
8 in the future.

9           So we're certainly appreciative that this has  
10 gone forward, and look forward to continuing to work with  
11 the Board as these get developed, both within the Waste  
12 Board realm and in the legislative realm to correct some  
13 of these issues.

14           I want to speak to a couple of the issues that  
15 have been, raised I won't speak to all of them because I  
16 realize time is short, but I do want to highlight a  
17 couple of key points.

18           The first is the landfill issue. And that has  
19 certainly been a priority for our organization for the  
20 last several years. And I want to speak to a little bit  
21 of the history because I know there's been some reference  
22 to that by a couple of the Board members today. And I  
23 think a lot of you weren't around when some of these  
24 issues were first being raised.

25           We had been raising the capacity issue for a

1 number of years, ever since 939 was raised -- passed.  
2 And the focus was on that language to prevent or impair.  
3 That the Board had the authority to object to a permit if  
4 it would prevent or substantially impair the achievement  
5 of the diversion goals by local governments.

6           The staff actually had done a pretty thorough  
7 analysis. Every time a permit came forward the staff  
8 actually did a pretty thorough analysis in terms of  
9 looking at that issue. Some of the Board members were  
10 concerned about that, and so an item was brought before  
11 the Board over a several month period to look at  
12 restricting what the Board would look at. And we had  
13 been actually urging that the Board actually expand so  
14 that it would be looking at capacity issues.

15           What ultimately happened and the direction that  
16 was given was that the Board would actually narrow its  
17 focus and only look at, specifically, contract issues,  
18 contract or financial issues.

19           And so that was the policy that was  
20 established. We weren't pleased, we wanted to see it  
21 expanded to include capacity, but nevertheless that was  
22 the policy that was adopted by the Board.

23           Then about, I think a year or two later, an  
24 actual permit came before this Board. It was a permit  
25 for a material recovery and transfer station up in Placer

1 County. And we objected to that permit on the grounds  
2 that the permit for that facility involved a number of  
3 agreements that were made with local agencies to supply  
4 material to that facility.

5 And in those agreements they actually dictated  
6 that these local agencies should discontinue diversion  
7 programs if that would undermine the facility. And yet  
8 the facility's contracts only required that the facility  
9 divert a base amount of ten percent and, on demand,  
10 achieve twenty percent.

11 Well our reading of that was that here's a  
12 facility that's designed at the most to do twenty  
13 percent, and yet the diversion goals are fifty percent.  
14 It seemed like this facility, by contracting and building  
15 that facility and limiting the ability of local agencies  
16 to implement other diversion programs, in effect this  
17 facility would have the potential of impairing the  
18 ability of those jurisdictions to meet 939.

19 We felt we brought forward a pretty clear case  
20 of one where the Board should step in, but unfortunately  
21 the Board members, a majority of the Board members did  
22 not see it that way, and they did not object to the  
23 permit.

24 And it was because of that issue being raised by  
25 our organization before the Board that the League of

1 Cities in CSAC went before the legislature and had that  
2 policy repealed.

3           We did not object to that bill because we  
4 recognized that; number one, the Board really wasn't  
5 using the language to the level that we wanted, we really  
6 wanted to see it expanded and yet the Board was narrowing  
7 it. And the fact is that policy only applied to the gap  
8 period. And that within a couple of year period, the gap  
9 period would be over once all the management plans were  
10 approved, and that language would become null and void  
11 anyway. So that was why we allowed that language to be  
12 repealed.

13           But we still continued to believe that that  
14 language reflected what we think is a very reasonable  
15 policy, that the Board should not be approving the  
16 expansion of landfills if it would prevent or impair the  
17 ability of jurisdictions to meet 939.

18           And we believe that capacity needs to be part of  
19 that scope of, in terms of what the Board will look at.  
20 I think, we certainly recognize, and I know Mr. Jones has  
21 raised some concerns about how you would actually go  
22 about doing that. We certainly recognize that this is  
23 something that needs to be fully looked at and we need to  
24 look at how it needs to be done.

25           We don't really have all the answers here today,

1 but we feel this is, this really needs to be a top  
2 priority of the Board. Certainly it's reflective in the  
3 audit report that this is one that should be considered  
4 by the Board in the future.

5           Second issue is the environmental justice  
6 issues. As an environmental group we certainly work with  
7 a lot of the organizations, other environmental groups  
8 that have strong concerns about environmental justice,  
9 and we would certainly strongly support seeing further  
10 discussion regarding issues expanding the Board's  
11 authority to look at these issues as it considers  
12 landfill permits.

13           Third issue is with regards to the long term  
14 violation policy. I know that's before the Board later  
15 this afternoon, and we will be recommending that the  
16 Board repeal that policy.

17           You take a look at this landfill that we brought  
18 before the Board yesterday, the landfill at Highway 59.  
19 Here's an example of a landfill where in 1997 they were  
20 issued a notice and order to get in compliance by 1999,  
21 and here it is 2001, two years after when they were  
22 supposed to be in compliance, and they still aren't in  
23 compliance.

24           So clearly there are examples of landfills where  
25 they have been given the opportunity, they have been

1 given the time; it was stated by several of the Board  
2 members that oftentimes these problems take time to  
3 correct; the fact is these compliance orders allow, these  
4 notice and orders give time for these landfills to get in  
5 compliance and yet they have failed to meet those  
6 requirements.

7           So we feel it is appropriate for the Board to  
8 repeal that policy, and consistent with one of the other  
9 items later on in the list, the LEA enforcement order,  
10 and to really stick to the Board's responsibility and  
11 make sure that the dates specified in notice and orders  
12 are indeed complied with.

13           The next issue was the permit enforcement policy  
14 from 1990, and recommendation to rescind that policy,  
15 which we would support that as well.

16           We feel that, frankly, if a Board -- if a  
17 landfill is not adhering to the requirements of its  
18 permit, it shouldn't be allowed to continue to operate.  
19 I mean the permit should be revised to reflect those  
20 operations, and that the policy of allowing these  
21 landfills to continue operating for lengths that,  
22 extended periods of time without correcting these  
23 violations, is unfathomable. And we feel this policy  
24 should be repealed.

25           I won't go through all of the other issues, but

1 I think we're generally supportive of many of the other  
2 recommendations that are made with regards to the LEAs  
3 and the enforcement orders. And so I won't go into  
4 detail.

5 But I do want to raise a couple of issues that  
6 weren't identified in the audit report that we feel needs  
7 to be addressed.

8 First and foremost, number one is that the Board  
9 needs to have, the Board needs to have the responsibility  
10 to take a majority vote on landfill permits. The fact is  
11 yesterday and previously on the Billy Wright landfill are  
12 just two examples of a long list of landfills where a  
13 three-three vote has automatically led to the issuance of  
14 a permit.

15 I know of no other environmental policy where we  
16 allow that kind of indecision to ultimately lead to the  
17 issuance of a permit. So that's first and foremost. We  
18 believe that the Board needs to be given direction that a  
19 majority vote is necessary in order to approve a landfill  
20 permit.

21 Secondly, and we've stated this before, we want  
22 to see better enforcement of ADC. We feel that there's  
23 been a lack of oversight in terms of the quantities of  
24 ADC usage. A lot of the figures that we're seeing show  
25 excessive uses, and we really believe that the Board

1 needs to take a much stronger stance in looking at ADC  
2 use, and would urge that to be part of the overall look  
3 at permitting and enforcement and AB 939 compliance.

4           The third issue that we would add is that we  
5 believe that there should be an increase in the landfill  
6 tip fee. The fact is the 1.34 that we're currently  
7 charging that was established by AB 1220, really doesn't  
8 cover a lot of the things that we feel the Board should  
9 be doing, both in terms of, as has already been  
10 identified in this audit report, for failure of many of  
11 the smaller rural landfills being unable to cover closure  
12 costs, that there ought to be a fee to help cover those  
13 costs.

14           But frankly, there are other programs out there  
15 that the Board could be doing. Things like a statewide  
16 waste prevention campaign, things like that where the  
17 Board could take a leadership role in helping local  
18 governments comply with 939, and yet the Board doesn't  
19 have the funds to do so.

20           So we would strongly support an increase in the  
21 fee to help cover some of those kinds of programs.

22           And last is with regards to the comment or the  
23 recommendation in the study to require local agencies to  
24 do a landfill, a revised base year every five years.

25           I think that, I think that's something that



1 we're not prepared at this point to endorse. We want to  
2 continue talking about that issue, but I think aside from  
3 the recommendation and the report, I think absolutely the  
4 Board should, within the next year or so, conduct a  
5 statewide diversion study.

6           The fact is, all the diversion numbers that the  
7 Board continues to put out there in terms of where we are  
8 on a statewide basis, I believe the current number is in  
9 the realm of 37 percent, the fact is that all of those  
10 figures are based upon projecting from our 1990 base  
11 year.

12           And the fact is, it's been eleven years now  
13 since 939 was passed, or since these base year studies  
14 were done. So it's appropriate for the Board to do a  
15 statewide study, just so we know where are we at in terms  
16 of statewide diversion? And do that on a material by  
17 material basis.

18           The fact is, while we may think we're at a 37  
19 percent diversion rate overall, we have no idea where  
20 we're doing in plastics, how we're doing in paper, how  
21 we're doing in other commodities.

22           So we think it's very important for the Board  
23 to, at least on a statewide basis if not on a more  
24 geographic waste shed basis, do a study to determine  
25 where we are really at in terms of division.

1                   And with that, those are our recommendations.

2   We certainly intend to continue being part of this, and  
3   look forward to getting some of these issues resolved.

4                   BOARD CHAIR MOULTON-PATTERSON:   Thank you, Mr.  
5   Best.   And for you and also for the audience I might note  
6   that this is the first time the Board has been able to  
7   discuss this audit report as a Board, and it certainly  
8   won't be the last time.

9                   It's my hope that we'll be going through each  
10   and every recommendation over the next few months.  
11   Justin Malan is our next speaker, followed by Mike  
12   Schmaeling.

13                  MR. MALAN:   Good morning, Madam Chair, Board  
14   members.   Thank you for the opportunity.   Justin Malan  
15   with the Environmental Health Directors.   Just to make a  
16   quick distinction, we are the regulators in environmental  
17   health programs throughout the state, it includes  
18   hazardous waste, includes food sanitation, includes  
19   drinking water, it includes beach closures.   You name it,  
20   we do it at the local level.

21                  We have submitted our response to the audit.   We  
22   have some serious misgivings about it, don't want to  
23   mince my words, but we don't want to be defensive, we  
24   want to be proactive, we want to move ahead.

25                  We have submitted our comments to the Auditor,

1 to your Board, to the legislature, and to Cal EPA. We  
2 outlined a few areas where we feel it is just gross  
3 oversimplification of situations, long term gas  
4 violations; and we also feel that there's some areas  
5 where the report basically undermines the whole process.  
6 It undermines the process, whether it was intended or  
7 not, it leaves you with the sense that the system's not  
8 working.

9           We believe from the outset, and I'll get into  
10 some specifics, that we have a fundamentally sound  
11 system. It's a system that certainly our organization,  
12 Cal EPA has held up as an example. It's a system of  
13 state and local collaboration that was the basis for the  
14 Cooper program. And several states around the nation  
15 have followed this local state partnership arrangement  
16 where the locals have certain authorities delegated in  
17 lieu of their local land use authority, and they have  
18 strong routine oversight, effective oversight by a state  
19 agency.

20           There are a number of LEAs that are far more  
21 competent than myself to deal with the specifics, and I  
22 want to let them have that opportunity. But I felt,  
23 particularly after the discussion today, I wanted to  
24 address Board Member Paparian's concern, and certainly  
25 Senator Roberti's concern of a conflict of interest, and

1 I wanted to make a quick comment about how we should  
2 proceed.

3 I possibly am a little over sensitive, Senator,  
4 about the conflict of interest issue, I must admit that  
5 up front. Because I think conflict of interest is a  
6 perception. It may occur, but we have not seen an  
7 example where it does occur, notwithstanding the letter  
8 that was written from an LEA, notwithstanding  
9 deliberations over Billy Wright.

10 We do not see an example where it, a blatant or  
11 even a patent conflict of interest has occurred where  
12 either the operator or the Board or a member of the  
13 public has brought it to the Board's attention, and that  
14 it's been so egregious that the Board feels it should  
15 take this matter into their hands and act on it.

16 I just want to stress that there was mention  
17 that just because money is generated means that we have  
18 an automatic conflict of interest. This Board depends on  
19 fees from landfills. Does that put you in an untenable  
20 conflict of interest situation? Does that mean that all  
21 your efforts to regulate the solid waste management in  
22 this state must be thrown out the window because you  
23 receive almost a hundred percent of your revenues to run  
24 this excellent organization from tipping fees, just as we  
25 do receive our money from tipping fees?

1           That's the mechanism. That's the way we pay our  
2 way. It doesn't mean that we have, are fraught with  
3 problems just because we get fees to pay for our  
4 services. 95 percent of environmental health services  
5 are paid for by fees. We do not get state general funds  
6 to protect the environment and to protect public health  
7 at the local level, we charge fees.

8           So I do take exception to the suggestion that  
9 just because we get fees for our service that there's a  
10 conflict of interest.

11          I also fail to see the logic where there was a  
12 suggestion about the way that we schedule our  
13 inspections, that just because we may provide 24 hour  
14 notice means that there's a conflict of interest.

15          The vast majority of the people we inspect are  
16 privates. The decision to give them notice or not notice  
17 is in no way related to a conflict of interest, it's a  
18 management issue. I don't think we decide that we're  
19 going to give the publics 48 hour notice, and the  
20 privates 24 hour notice. I don't think that's part of  
21 the equation, if it is, please tell us, and we will help  
22 you address it.

23          Let me tell you the procedures that are already  
24 in place lest we don't know them.

25          Firstly, there are no distinctions between the

1 permit requirements and the enforcement requirements  
2 between public operators and private operators.

3           Secondly, the Board has clear explicit statutory  
4 authority to supercede any LEA if, in the Board's  
5 opinion, the LEA's failed to do its job.

6           If the LEA's turning a blind eye because Joe  
7 Schmo is on the Board of Supervisors and Joe Schmo  
8 doesn't want you to step in, the Board can step it, in  
9 fact statutorily it's obligated to step in.

10           Thirdly, we practice good business practices.  
11 If there's a conflict of interest or potential conflict  
12 in interest or smattering of possible conflict of  
13 interest, we have different counsels that represent the  
14 LEAs. In most cases most LEAs have independent  
15 counsel's, private counsels from a private law firm to  
16 represent them.

17           BOARD MEMBER ROBERTI: Madam Chair.

18           BOARD CHAIR MOULTON-PATTERSON: Senator Roberti.

19           BOARD MEMBER ROBERTI: I'd like to interrupt Mr.  
20 Malan right at that point because it's very important  
21 when you bring in the issue of counsel or lawyers, I  
22 think that gets to the whole point.

23           I do think you're a little defensive.

24           MR. MALAN: I agree.

25           BOARD CHAIR MOULTON-PATTERSON: Because the

1 issue really, the main issue is not counsel or lawyers,  
2 because nobody is accusing the LEAs of doing something  
3 unlawful. And the intensity of your presentation gives  
4 the impression that that's what you think is before us.  
5 Hardly.

6           The issue is that the mechanism which you are  
7 required to operate under creates a conflict of interest  
8 in the minds of some members of the Board.

9           I guess conflict of interest is unfortunate  
10 because we use that in a legal sense, in a criminal  
11 sense, and also in a conversational sense as to the  
12 bifurcated loyalties or responsibilities that you have to  
13 operate under.

14           Reporting whether a inspector is coming; if I  
15 were an LEA responsible to my county government that  
16 operates a landfill, who have given me my employment,  
17 charged me with my responsibility, and tell me that I am  
18 responsible to the elected Board, the taxpayers or the  
19 voters of that district, I probably would find it my  
20 responsibility to tell them if I knew an inspector was  
21 coming, "The inspector's coming." I would be discharging  
22 my responsibility.

23           The fact that I don't happen to like that  
24 situation because it puts a LEA under an impossible dual  
25 responsibility doesn't mean that I'm castigating the

1 LEAs.

2           We're saying that within the system there is a  
3 problem, one that is written into regulations and  
4 statutes, and not written into the good intentions of the  
5 LEAs.

6           So I appreciate the intensity of your feeling.  
7 It reminds me absolutely of my own feelings when people  
8 from the outside used to say that the legislature cannot  
9 reform itself. And we would get very, very upset because  
10 we would try our very hardest to reform ourselves.

11           But the fact of the matter is that is very hard  
12 to reform from the inside because that is -- now that I'm  
13 on the outside I can say this -- because you have vested  
14 interest in the operation that you have grown accustomed  
15 to.

16           That is not saying that anybody is doing  
17 unlawful activity, is not working very hard, or not  
18 trying to discharge their obligations. And you have dual  
19 responsibilities that do conflict, and that one small  
20 area of notice on an inspection I think just highlights  
21 it.

22           Same happens with funding. Yes, this Board is  
23 funded, but we are also independently appointed. So that  
24 I am going to be a member of the Board, I guess,  
25 independent of what the funding source is.



1           I don't know if that's necessarily the truth  
2 with LEAs, whether they will continue to be LEAs if they  
3 displease the county -- using the county as an example,  
4 if they do not expedite the county's funding.

5           Orange County, for example, not wanting to pick  
6 on the chair's county, but they've gotten out of  
7 bankruptcy, in large part because they're taking L.A.'s  
8 trash. That was one of the great revelations I found  
9 when I first was appointed to the Board. And it suddenly  
10 hit me, hmmm.

11           I mean I didn't realize counties actually  
12 wanted, until I got appointed to the Board it never hit  
13 me that people actually wanted trash. Now I understand  
14 it just works the other way around.

15           But it's hard to believe that when it's such an  
16 important issue to that county that that is not a factor  
17 that's going to weigh on their minds when they make  
18 decisions, simply because they have a responsibility to  
19 the county.

20           So I guess my point is, I think you're a tad  
21 intense, because we're not castigating you. We  
22 appreciate what the LEAs do, we understand they have a  
23 dual responsibility, and we're trying to wend our way out  
24 of this as you are, because I think it creates a problem.

25           MR. MALAN: I appreciate that, Senator. I'll

1 try and tone down my intensity.

2 BOARD MEMBER ROBERTI: If you want to you can  
3 keep it up.

4 MR. MALAN: I think it has been wrapped up over  
5 the seven or eight years I've been representing CCBH, and  
6 without inferring any motives behind this, I have seen it  
7 in the past as being one of those so-called Achilles  
8 heels of the LEA program that folks that have never liked  
9 the LEA program wave in the air to show why the program  
10 is bankrupt.

11 And I would suggest to the Board that we clearly  
12 define the distinction, as you did, between dualistic  
13 responsibilities and conflict of interest.

14 And secondly, to be very careful when we say  
15 that because there is a potential of conflict of  
16 interest, which no one, not even I as a zealot, no one  
17 has denied the potential.

18 But we are not concurring with the Board report  
19 that at least suggests that it so-called imperils public  
20 health and the environment.

21 So I would not agree that we have a problem, I  
22 would simply agree that we have a potential and that  
23 needs to be reviewed.

24 Let me try and cut my comments short then.

25 Just to follow up on the process, though, that

1 in addition to that opportunity to the public to  
2 challenge any LEA inaction or action, and that we  
3 actually supported when that legislation was changed a  
4 few years ago, recognizing that it was going to put us in  
5 an awkward situation, where any group could challenge our  
6 action or inaction before a hearing panel, we felt that  
7 was a valuable check and balance, and I believe that is  
8 another one.

9 And of course you know that the eighteen month  
10 review of the LEA performance and the opportunity to  
11 decertify the LEA if that LEA, be it rural, urban,  
12 wherever, is not doing their job.

13 Enough of that. I just do want to offer the  
14 assistance, the commitment of CCBH to make this process  
15 better than it is. We have always been at the table.  
16 We've always asked to be at the table. We will continue  
17 to ask to be at the table. And we would like to continue  
18 making this an exemplary program.

19 We do want to, on behalf of all the  
20 environmental health directors, tell this Board and your  
21 staff and the members here that we hold the Waste Board  
22 program up as an example; not of how locals and the state  
23 can work together and do a good job, but the way that you  
24 have in the past involved stakeholders in your policy  
25 decision-making, your rulemaking process, the regulatory

1 process. And we have gone to Cal EPA on many occasions  
2 and offered that as an example of how we can get things  
3 done.

4 We are defensive over the report. We hope it  
5 doesn't make it divisive. We hope that you will stay at  
6 the table and iron out some tweaks in the system rather  
7 than take a hatchet and spoil what's been developed over  
8 the last ten years.

9 Thank you, Madam Chair. Thank you, Board  
10 members. Thank you, Senator.

11 BOARD MEMBER JONES: Madam Chair, can I ask a  
12 question?

13 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

14 BOARD MEMBER JONES: First off, I appreciate  
15 your zealousness, I think that you would not be serving  
16 your constituency if you weren't a zealot.

17 And I think that AB 59 that you briefly touched  
18 on, and I don't know if it was part of the audit or if it  
19 was considered as part of the, in the audit, but that,  
20 that law gave citizens the right to go in front of a  
21 local hearing panel if they ever thought that an LEA was  
22 not doing their job. And we have had AB 59 hearings come  
23 in front of this Board after it had gone through the  
24 local process. That's a check and balance.

25 I think the percentage in the State of

1 California of publicly-owned facilities versus privately  
2 owned, I don't know what the exact percentage is, but I  
3 would say the lion's share is privately owned. I just  
4 don't know the right number and I'm not going to give  
5 one.

6 But I, I don't know that there is a conflict of  
7 interest that goes to the extent that because you, you --  
8 and if an LEA feels an obligation to go to the public  
9 works director and tell him, all you have to know is an  
10 LEA is going to inspect your facility once a month, if  
11 LEAs inspect once a month, facilities are -- you can't  
12 clean up a facility in a day. I mean you can of some  
13 litter, but you can't of normal operating. You can't put  
14 intermediate cover on. You can't do a lot of things.  
15 It's just physically impossible.

16 So anybody that operates a facility where they  
17 think they need to be tipped off to get into compliance  
18 in one day, I haven't met you. If I have, if I, if  
19 you're out there and you're getting away with it, you're  
20 unreal. I mean it's -- enough.

21 I just also, you know, I'm doing the best I can  
22 to kind of keep my passion under control here.

23 BOARD MEMBER ROBERTI: You're doing very well.

24 BOARD MEMBER JONES: And I think I'm doing real  
25 well. But I think that it's important too when you say

1 two counsels. Counsels aren't used for just lawsuits,  
2 they're used as advisors. And I think that that, that  
3 the fact that the LEAs have separate counsel tells me  
4 how importantly they take that position. And while I've  
5 wanted to bury a few of you over the years, by and large  
6 most of you do a great job.

7 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.  
8 Jones.

9 Mike Schmaeling.

10 MR. SCHMAELING: Good morning. Correction, it's  
11 Schmaeling.

12 BOARD CHAIR MOULTON-PATTERSON: Sorry.

13 MR. SCHMAELING: That's quite all right. Just  
14 to follow a little bit on Justin's heels. I'm a Deputy  
15 Health Officer sworn to uphold the health, the safety,  
16 and the environment. That's my first responsibility, my  
17 first obligation.

18 Public works welcomes the fact that my  
19 inspections are unannounced. I work very closely with  
20 the Integrated Waste Board on the results my inspections.  
21 I work with their legal counsel routinely. These things  
22 give me that independence from that perception of a  
23 conflict of interest. I just wanted to assure that now  
24 we'll continue working.

25 I've worked with the Board staff for many years,

1 work which involved the policies which were developed by  
2 the audit. I will work with the Board on the opportunity  
3 to review and implement improvements to the existing  
4 duties. I welcome constructive criticism and understand  
5 the positive benefits of program and agency audits.

6           However, careful consideration must be given to  
7 all recommendations. A few questions must be asked and  
8 responded to to be sure that the agency's mission is kept  
9 in focus.

10           First question: Does the reviewing party  
11 understand the goals and objectives of its subject?

12           Second question: Will the recommendations aid  
13 us in accomplishing our mission?

14           And third question: What are the possible  
15 impacts of implementation, and how will the reviewing and  
16 quantifying of the results be done so that we can  
17 continue to perform our duties most effectively?

18           Back on the first question. Does the reviewing  
19 party understand the goals and objectives? From my  
20 review of the audit, I don't feel that the Auditor came  
21 away with a good understanding of the solid waste  
22 industry and how it's regulated, and the complexities  
23 involved in how we meet our objectives.

24           However, in pursuing, making the best possible  
25 programs between Partnership 2000 and utilizing whatever

1 criticism we do get, will their recommendations aid us in  
2 accomplishing our mission?

3           The following eight recommendations were taken  
4 from the audit summary.

5           Number one. Exploring the options on the  
6 consideration on considering the necessity for increasing  
7 landfill capacity as a factor in granting a permit, site  
8 and jurisdictional needs must be considered.

9           As part of the Santa Barbara County Landfill  
10 Siting Committee, I know how hard it is to site a new  
11 landfill, and I'm sure you folks have struggled with, how  
12 many new landfills have come in front of you?

13           Expansion of existing landfills helps to meet  
14 immediate community needs. The decision to expand must  
15 be a local decision. You will have the ultimate decision  
16 on whether or not to approve that, but to make that  
17 decision based on site capacity, I think that it is a  
18 land use concern.

19           Getting legislative authority to object to  
20 permits when environmental justice concerns exist. I  
21 agree; however, these concerns must be quantified and  
22 permit denial impacts should be considered.

23           Number three. Discontinue the 1994 policy on  
24 long term violations. I'll speak more on this during  
25 agenda item 21, but for now, this policy was beneficial



1 in working with our operators in seeking mitigation and  
2 compliance of violations which had complex and timely  
3 remediation processes.

4           Number four. Suspend 1990 policy on allowing  
5 operators to violate terms and conditions of their  
6 permit. While seeking approval for permit revisions --  
7 excuse me, that's a period there.

8           In 1990 a great effort was made to correct and  
9 update very, very old permits. We had permits going back  
10 to 1978 back then. For those of you who are fairly new  
11 to the Board, there was a massive effort back in 1990  
12 through 1994, '95 to get all of those permits updated.

13           So consequently, there was a lot of situations  
14 where we had one page permits on these facilities that  
15 didn't have any terms, didn't have any conditions. And  
16 since these great strides have been made up to date, I  
17 feel it is appropriate that we rereview this policy.

18           Number five. Continue to improve its  
19 performance in conducting eighteen month landfill  
20 inspections. It has been my experience that Board staff  
21 has done a great job in meeting this goal over the last  
22 few years. As referred to previously, we work very  
23 closely with Board staff. I probably talk to my permit  
24 and enforcement section at least weekly, going over  
25 issues, permit conditions, working with them on five year

1 permit reviews. There's a very close contact that the  
2 LEAs maintained with this, and it's all part of the  
3 Partnership 2000 goals.

4           Ensure LEAs require operators to comply with  
5 enforcement orders by the dates specified, and issue  
6 penalties. The recent finalization of the revised  
7 enforcement regulations have addressed this policy.

8           Modify regulations to prevent LEAs from  
9 extending deadlines indefinitely for submitting closure  
10 plans. No regulation change should be required. LEAs,  
11 the LEA evaluation procedures require that the closure  
12 branch report on any deficiencies in the closure plan  
13 process.

14           This process, since it involves a multi-agency,  
15 not the evaluation process, but the closure plan process  
16 involves many multi-agency reviews, these can be very  
17 time consuming and may take a long time for approval.  
18 The evaluation process by the state Board staff looks at  
19 each issue on a case by case basis. Regulation change  
20 may remove this ability.

21           Number eight. Ensuring diversion rates are  
22 accurate. Statewide consistency on this issue is needed,  
23 and I understand that it, that particular section is  
24 going around to the different sections and they're  
25 working on developing that consistency right now.

1           That leads me to my third question. What are  
2 the possible impacts of implementation and how will we  
3 review and quantify the results so that we can continue  
4 to perform our duties most effectively.

5           Mike Schmaeling, as I said, is my name, and I  
6 represent the EAC, and I'm the chair for the EAC.

7           The EAC offers this Board a unique opportunity  
8 to evaluate and suggest recommendations and how these  
9 recommendations could impact solid waste enforcement.  
10 Work groups from all stakeholders in the past have set  
11 this Board above and apart from other state agencies.  
12 This Board can direct the formation of work groups on  
13 each one of these suggested recommendations. That would  
14 assure that the implementation of any changes would be in  
15 the best interest of the stakeholders.

16           In closing, the EAC stands ready to help this  
17 Board in any way we can.

18           Any questions?

19           BOARD CHAIR MOULTON-PATTERSON: Thank you.

20           MR. SCHMAELING: Thank you.

21           BOARD CHAIR MOULTON-PATTERSON: Denise  
22 Delmatier. And then Richard Hanson. We still have quite  
23 a few speakers.

24           MS. DELMATIER: Good afternoon, Madam Chair,  
25 members of the Board, Denise Delmatier with NorCal Waste

1 Systems.

2 I want to agree with Senator Roberti in that I  
3 think self-reflection is always a healthy exercise, and  
4 certainly the state audit report provided an opportunity  
5 to take a serious look and review the major policies that  
6 have been developed over the years after the  
7 implementation and passage of AB 939. It's a wide  
8 sweeping report and certainly does an excellent job in  
9 raising some very fundamental questions regarding the  
10 Board's oversight role in implementing AB 939.

11 I want to also agree to walk down memory lane  
12 just a little bit and remind ourselves why we're here and  
13 where we came from. In 1988 the Assembly Office of  
14 Research at that time conducted a report. And at that  
15 time the report concluded that the solid waste crisis in  
16 California and in the United States often is described  
17 with one phrase, "declining landfill capacity."

18 The real cause of the disposal crunch is a steep  
19 decline in the number of landfills where the waste may be  
20 disposed. Too much garbage, and too little space for  
21 it. That's why we developed AB 939. And we came up with  
22 a two-pronged solution.

23 One was to require cities and counties to, and  
24 in fact, mandate cities and counties to develop long  
25 range plans that would, in fact, implement a minimum, not

1 a maximum, a minimum requirement of fifteen years  
2 disposal capacity.

3 Cities and counties have been very successful in  
4 implementing that part of the two-pronged solution. And  
5 we do have adequate landfill space today, unlike we had  
6 in 1988. We also have relatively reasonable disposal  
7 rates, which is a good thing. We didn't have relatively  
8 reasonable disposal rates in 1988, we had high rates.

9 So cities and counties have been successful in  
10 implementing that particular part of the two-pronged  
11 solution.

12 Additionally, the second part of the two-pronged  
13 solution was to develop long term plans and  
14 implementations of recycling and waste diversion  
15 programs. Cities and counties were successful and are  
16 successful in implementing that part of the program as  
17 well.

18 And I was very pleased yesterday to hear  
19 Chairwoman Patterson report that we are now at 42  
20 percent. That's amazing. When you think about where we  
21 were in 1988, and there were very few curbside collection  
22 programs, very few; think about how many we have today.

23 Think about the lack of commercial waste  
24 diversion programs in 1988, there were hardly any. They  
25 didn't exist. But think about where we are today.

1           The fact that we have come so far since 1988 in  
2   implementing AB 939 is a testament to the successes of  
3   cities and counties, LEAs, Board staff whom we have  
4   worked with over the years and haven't always agreed on  
5   everything, but it's a testament to the successes of this  
6   Board and previous Boards.

7           So while we appreciate the opportunity for  
8   self-reflection, at the same time we must agree to  
9   disagree with many of the recommendations of the state  
10   audit report.

11          We are signatory to a letter that you all  
12   received, I believe late yesterday afternoon. And that  
13   letter in more detail expresses the specifics of the  
14   objections and our misgivings towards the misdirection  
15   and misplacement of focus in evaluating the integrated  
16   waste management system in this state.

17          That letter, of course, was signed by California  
18   Refuse Removal Council; Norcal Waste Systems; the County  
19   Sanitation Districts of Los Angeles County; Allied Waste;  
20   the League of California Cities; the California State  
21   Association of Counties; and Waste Management, Inc., as  
22   well as the Solid Waste Association of North America.

23          BOARD CHAIR MOULTON-PATTERSON: I just might add  
24   that not all of our offices received one so --

25          CHIEF COUNSEL TOBIAS: Well I think they went to

1 the Board offices at the building, so if people didn't  
2 have a chance to pick them up.

3 BOARD CHAIR MOULTON-PATTERSON: Anyway, we just  
4 wanted to let you know that we all haven't seen them.

5 MS. DELMATIER: We will make sure that all Board  
6 members and staff have copies.

7 BOARD CHAIR MOULTON-PATTERSON: Thank you. I  
8 was told that it was e-mailed yesterday afternoon.

9 BOARD CHAIR MOULTON-PATTERSON: Well we didn't  
10 get out of here until 6:30 last night so --

11 MS. DELMATIER: In any event, that letter  
12 specifically responds to the objections to many of the  
13 recommendations of the report.

14 The Integrated Waste Management Act establishes  
15 a role for the Board, a role for local agencies, and a  
16 role for private industry. It is, in fact, a  
17 partnership. Each entity has a specific role that is  
18 different than each other. And as an integrated waste  
19 management system works well and complements the  
20 different roles towards implementing the Act.

21 Local agencies are, in fact, under the Act, the  
22 primary responsibility -- thanks, Chuck -- the primary  
23 agency with responsibility for permitting and  
24 enforcement.

25 Local agencies are charged, LEAs are charged

1 with developing permits and issuing permits.

2           The Board's role, on the other hand, in fact is  
3 quite limited under the Act, and we supported in  
4 developing AB 939 that limitation. The Board's role is  
5 not, in fact, the permitting authority, the Board's role  
6 is limited to concurring or objecting to a locally issued  
7 permit based upon whether or not that permit meets state  
8 minimum standards.

9           So if a permit, in fact, meets state minimum  
10 standards, the Board's role is very limited, you must  
11 concur. So --

12           BOARD MEMBER ROBERTI:

13           BOARD CHAIR MOULTON-PATTERSON: Yes, Senator  
14 Roberti.

15           BOARD MEMBER ROBERTI: I always like hearing  
16 Ms. Delmatier's recitation of the law because she is  
17 truly an expert.

18           You are.

19           MS. DELMATIER: Thank you.

20           BOARD MEMBER ROBERTI: But, but I don't think  
21 we're quarreling with what the Board's role is. In fact,  
22 some of us are saying maybe that's what the problem is,  
23 and that is that we cannot take into consideration, nor  
24 do we have the data gathering processes to take into  
25 consideration more generalized capacity issues and



1 regional issues.

2 And for my own sake I'm trying to find a way  
3 where we can maintain a heavy degree of local control,  
4 and yet take into consideration more regional  
5 capacity-oriented issues, that right now we can't do.

6 Now, and I'm hoping we can move in that  
7 direction. I don't know if that's necessarily where you  
8 want to go. But for my part I'm not quarreling with your  
9 excellent and always good to hear again recitation of  
10 what the law is, because you're right, as you usually  
11 are, not always, but usually are.

12 MS. DELMATIER: Well thank you for that  
13 acknowledgment, I do my best. And going back down memory  
14 lane -- and I'm addressing your comments specifically.

15 We did support AB 939, and we continue to  
16 support AB 939. But as a central fundamental cornerstone  
17 of AB 939 is the fact that local agencies are both the  
18 permitting and enforcement agencies under the Act. And  
19 there is good reason for that.

20 We believe that local agencies, cities and  
21 counties and LEAs are the, in the best position to make  
22 tough hard decisions that are of local concern. We  
23 always supported that position and we continue to support  
24 that position.

25 We think that the Board's role, on the other

1 hand, in implementing this integrated waste management  
2 system is different than local agencies.

3 And where we would like to see, and where we've  
4 encouraged the Board over the years to take a major role,  
5 as opposed to permitting enforcement and concurring or  
6 objecting to locally issued permits, and certainly Board  
7 member Steve Jones who is, in fact, a garbageman and  
8 proud of it, as I recall, got that right away when he  
9 came to this Board.

10 Two words, market development. That's where  
11 private industry has not the ability to address that  
12 issue of statewide concern. Cities and counties do not  
13 have the ability to dramatically affect market  
14 development of waste diversion materials, but this Board  
15 has that ability.

16 In fact, when we did AB 939 there was supposed  
17 to be a second piece, as you might recall, there was  
18 supposed to be a second bill the following year, and that  
19 was to address market development. It never happened.

20 There was, in fact, a component in 939 that was  
21 removed that would have established advance disposal  
22 fees. And the environmental community, local agencies,  
23 everyone who is a stakeholder and has responsibility  
24 under the Act supported that concept; but obviously that  
25 particular component is fraught with controversy, and at

1 the time suffering from some very serious budget  
2 constraints in 1988. That component was not followed  
3 through on, and we still haven't done it.

4 But that's where this Board can be of great  
5 assistance and provide a valuable role under the Act. We  
6 agree with Secretary Hickox comments at the Cal EPA  
7 briefing that Ms. Bruce alluded to yesterday.

8 We believe that this Board and the  
9 implementation of the Act is the shining example, when  
10 you look at the implementation and track records of the  
11 sister agencies, all of the sister agencies under Cal  
12 EPA, we believe that this Act and the successes under  
13 this Act are a shining example of the Cal EPA programs.  
14 And we appreciated those remarks by Secretary Hickox in  
15 recognizing that fact.

16 I want to also acknowledge former Board Chairman  
17 Dan Eaton in his pursuit, in his relentless pursuit of  
18 market development enforcement. We still have a long  
19 ways to go with the plastics industry. But under former  
20 Board Chairman Eaton's stewardship of this Board, he  
21 never let up. He never let up. And we appreciate the  
22 Board's role in market development, and we have a long  
23 way to go.

24 We also appreciate former Board Chairman's  
25 effort, Eaton's efforts in the 21st Century Project.

1 That project was amazing. And I, as part of it, along  
2 with everyone else in this room, there were thousands of  
3 participants, literally thousands of participants who  
4 actively participated in several workshops.

5 And I, well I can't forget coming away from the  
6 last one at the Sacramento Convention Center, after Board  
7 staff had done a tremendous job in preparing those  
8 efforts, and thinking, "You know what? We can do this.  
9 We can actually do this." We have, all of us have  
10 participated over the years in putting together a  
11 successful program, and it's actually working. It is  
12 actually working, and it's going to succeed, and it  
13 will. We appreciate those efforts.

14 In closing, with all due respect, and I'm  
15 passionate as well as Member Jones and Justin Malan  
16 having done this for a number of years; in closing, and  
17 with all due respect to the auditors, it ain't broke.  
18 Minor tweakings here and there, finetuning, but it ain't  
19 broke. It's a success, in fact. And we ought to be  
20 looking at it in those terms and with that view.

21 And I would hate to see that this Board took  
22 action or made recommendations to overhaul a successful  
23 program and take us down a path like utility  
24 deregulation, and that debacle, when we've got a success.

25 BOARD MEMBER ROBERTI: I can't let you pass on

1 that.

2 BOARD CHAIR MOULTON-PATTERSON: Senator

3 Roberti.

4 BOARD MEMBER ROBERTI: I think the Public

5 Utilities Commission, the Energy Commission, and even the

6 legislature would have been thrilled and delighted, in

7 retrospect, had they somebody talking to them with a

8 little bit of constructive criticism when some of the

9 decisions were made in 1996 that have led us into the

10 energy crisis.

11 And that is exactly why I view this audit as so

12 necessary. So now that you've got me talking again. I

13 do think we have a different focus as to what the purpose

14 of the law is.

15 The fact that the findings were that we have

16 limited landfill space was not an authorization to find

17 more, it was to find methodologies such as market

18 development to help us reduce our landfill space.

19 The fact that we call for a long range

20 management program is because we are an Integrated Waste

21 Management Board. Recognizing, as we all do, that we

22 have to have landfill space, I voted for Eagle Mountain,

23 for example, something I never ever dreamed that I would

24 cast a vote like that. So I understand the need. But

25 that doesn't mean we have no restrictions, or that this

1 Board doesn't take that or shouldn't take that into  
2 consideration.

3           So I think you have a, I think out of necessity  
4 and your philosophy, you have a much more circumscribed  
5 view as to what our role is as far as permitting is  
6 concerned.

7           And I truly do view the fact that we have to  
8 restrict landfill space as a basic role of ours, right  
9 there with market development; in fact, they work hand in  
10 hand because we are integrated to work.

11           And the PUC would have loved to have had an  
12 audit just like this, because it might have led to some  
13 different decisions.

14           MS. DELMATIER: Senator, I always appreciate  
15 your comments and the spirit they are offered in. We  
16 simply agree to disagree on where to go from here.

17           I'm happy to answer any questions.

18           BOARD CHAIR MOULTON-PATTERSON: Thank you, Ms.  
19 Delmatier.

20           Richard Hanson.

21           MR. HANSON: Good afternoon, Madam Chair,  
22 members of the Board. My name is Richard Hanson. And  
23 I'm the chief of the Solid Waste Management Program,  
24 County of Los Angeles, Department of Health Services,  
25 County of Los Angeles Local Enforcement Agency.

1           I've been with the County Health Services for 31  
2 years, a member of the LEA program for eighteen, and as  
3 chief for the last 11 years. As the initial impetus for  
4 this report was the Sunshine Canyon landfill in L.A.  
5 County, and we are the LEA for that landfill, the LEA  
6 feels compelled to comment in some respect to the report.

7           The report does not identify any specific  
8 problem with the operation of the landfill or the  
9 regulation of it by either the Board or the LEA.

10          The report does mention that the operator has  
11 not submitted a Solid Waste Facility Permit application  
12 for the expansion into the city area, but the report also  
13 indicates that the permit procedures employed by the  
14 Board and the LEAs appears to follow state law, and it  
15 could find no fault in this general area.

16          Therefore, if the LEA follows the usual permit  
17 procedures when an application is submitted, the State  
18 Auditors would probably not uncover any discrepancy here  
19 also.

20          This should not be surprising. Sunshine Canyon  
21 is arguably the most regulated municipal solid waste  
22 landfill in existence. A representative from the LEA is  
23 present during every minute of its operation. This is a  
24 CUP requirement that the LEA, although not required to  
25 enforce CUP conditions, has carried out under an implicit

1 order from its governing body, the County of Los Angeles  
2 Board of Supervisors, in order to satisfy local concerns.

3           Now I'd like to take a few minutes and talk  
4 about the past, down memory lane again. I'm sure that  
5 each of us has their own perspective on the changes made  
6 at landfills during the past twenty years, but I'd like  
7 to tell you what my observations are looking back at that  
8 period. I think it's important to get a clear view of  
9 where we've been in order to form a realistic frame of  
10 reference for the present.

11           I'll always remember my first few weeks with the  
12 solid waste program in 1983 with stark clarity. Before  
13 this, my only experience with trash as a health inspector  
14 had been with trash and cans or what was accumulating in  
15 vacant lots.

16           I was given a tour of the facilities within L.A.  
17 County by the solid waste staff before being assigned to  
18 a specific job. What struck me most was the following:

19           Newly constructed single-family dwellings  
20 located immediately adjacent to two active landfills,  
21 whose backyards could not have been further than a few  
22 yards from buried trash. And it was true in both cases  
23 that landfill gas was migrating at least several hundred  
24 feet off the sites.

25           One landfill had accepted industrial liquids,



1 had a leachate collection system at the toe of the fill.  
2 The operator would collect the leachate in tanks, pump it  
3 into a truck, and then drive the truck back up to the top  
4 of the working face where the trash was being dumped, and  
5 then discharge the leachate back into the trash.

6 Another landfill had leachate running out of the  
7 front face which was then collected in a pawn at the toe  
8 of the fill. Periodically this pawn was flushed into the  
9 storm drain. The leachate originated upon a natural  
10 spring upon which the landfill was constructed. The  
11 owner was fully aware of the spring before the  
12 construction of the fill.

13 A number of sites and high wind areas had litter  
14 spread for miles downwind of the site. And many of these  
15 operators would only pickup the off-site litter only if a  
16 high wind event had occurred, or if a complaint had been  
17 lodged.

18 So-called inert sites, which were allowed to  
19 accept up to ten percent non-decomposable organics,  
20 stretched the ten percent limit and the definition of  
21 non-decomposable to the point that these sites started  
22 taking on the appearance of a solid waste municipal  
23 landfill.

24 I remember at the time being very confused at  
25 the distinction between these types of sites and the

1 others I was looking at.

2           And generally, many landfills had daily cover  
3 problems with extensive protrusion of tires, papers and  
4 rebar through whatever cover there was.

5           The few landfills that bothered to check either  
6 the incoming loads or the working face for hazardous  
7 materials had large hazardous waste storage areas filled  
8 with hazardous waste of one kind or another.

9           But by far the figure biggest impression left on  
10 me was the complete collapse of the front face of a very  
11 large landfill. It had been an El Nino year. The top  
12 deck did not drain properly, a large pond had formed,  
13 breached the lip, and then cascaded down the face several  
14 hundred feet, eroding the cover and burrowing into the  
15 trash as it went.

16           This slurry arrived at a streambed at the foot  
17 of the landfill, turned right, and rushed downhill,  
18 filling downstream catch basins one after another with  
19 debris. I'll always remember the bits of trash still  
20 clinging to the branches of the trees that weren't  
21 destroyed in this flood.

22           It's very unlikely that any of these  
23 observations could be repeated today. We came through  
24 the worst El Nino in history several years ago, and our  
25 LEA noticed only minimal effects to the landfills in our

1 county.

2           So what were the differences in the regulatory  
3 environment and the industry state of the art regarding  
4 landfill design and operation circa 1983 and now?

5           In 1983 there were no statewide closure plans,  
6 only the San Francisco Regional Board required the plans.

7           Closure requirements in Title 14 were limited to  
8 only four items; site maintenance, final cover, final  
9 site face slopes, and landfill gas problems.

10           Today detailed closure plans and financial  
11 assurances are in place and are reviewed by three  
12 agencies.

13           In 1983 there were seven sites in L.A. County  
14 that accepted municipal, that accepted industrial liquid  
15 waste, sludge, drilling muds, etcetera. Medical or  
16 infectious waste was allowed at all municipal solid waste  
17 landfills without control.

18           Today, hazardous waste, medical waste, liquids  
19 and many other materials entering the landfill are now  
20 strictly controlled or prohibited by law, and by the  
21 exclusion programs carried out by the operators.

22           In 1983 there were no liner requirements.

23           Today groundwater is protected by required  
24 liners. Surface waters are protected by landfill design  
25 requirements and drainage structures.

1           In 1983 landfill gas and its control was only  
2 beginning to be understood. Gas control could only be  
3 required if a hazard or nuisance could be identified.  
4 Landfill gas migration standard of five percent had just  
5 been established by the EPA in 1982. There were no  
6 surface emission requirements.

7           Today, definitive standards in environmental  
8 controls of landfill gas migration and surface emission  
9 are now in place.

10           In 1983 operational regulations were in place  
11 in 1983, that may not have changed much in the text, but  
12 today the interpretations of the text as to what is  
13 acceptable has risen substantially.

14           Also today, nuisances such as odor, dust, noise  
15 are covered by Title 27, air district regulations, or  
16 local ordinances. The implicit performance standards of  
17 some of these subjective nuisances are much higher than  
18 twenty years ago.

19           In 1983 state inspections by the Board were once  
20 a year. There was no frequency standard or requirement  
21 at all for LEA inspections. There was little or no  
22 training of LEAs by anyone regarding anything. Everyone  
23 had to more or less learn on the job. But given the low  
24 expectations for operator and regulator, minimal  
25 regulations, and only a basic understanding regarding

1 environmental impacts due to landfills, either long or  
2 short-term, there was a limited need for formal  
3 instruction.

4           Today the dramatic changes at landfills over the  
5 past twenty years is also reflected in the change in the  
6 increased ability of the LEAs due to the following:

7           Training conducted by the Board concerning  
8 landfill gas, CEQA permitting special waste, and landfill  
9 inspections, plus specialized functions relating to all  
10 other facilities and operations that the LEAs regulate.

11           Training conducted by industry, such as SWANA,  
12 manager of landfill operation, and many others.

13           The availability of the grants that have made it  
14 possible for some LEAs to acquire the means, intellectual  
15 and material, to become truly professional.

16           Increased communication such as the advisories  
17 and LEA conference, and the increased interaction between  
18 LEA and Board staff.

19           And the reviews conducted by the Board of CEQA,  
20 the solid waste facilities permits, and enforcement  
21 orders of the LEAs that lead to statewide consistency.

22           If the permit process looks like a rubber stamp  
23 at times when it arrives at the Board, it's because of  
24 all the work behind the scenes between the LEAs,  
25 industry, and Board staff. Before the late 1980s there

1 was almost none of this.

2 And finally, the evaluations which are based on  
3 the eighteen month inspection by the Board that the  
4 Auditor criticize is primarily a tool to evaluate the  
5 LEA's performance, and the review of LEA-produced  
6 documents.

7 Summarizing our current status, a long-term  
8 concern for the environment pervades all aspects of  
9 operation and design of landfills today. Standards exist  
10 now which were not in place a few years ago, and those  
11 that were are either explicitly or implicitly higher.

12 Expectations of superior performances demanded  
13 by the public, the regulators, and the industry itself.

14 Who accomplished all this? Well we all did.  
15 The legislature, industry, local government, public  
16 interest groups, state and local agencies, and the  
17 public.

18 I'm sure there is ample representation in this  
19 room right now from each group who personally have been  
20 present who helped create a large part this history.

21 But from an LEA's perspective this was anything  
22 but easy. Good working relationships between the Board  
23 and its staff with the LEAs has waxed and waned.

24 However, given the constant input into the  
25 process of new laws, regulations, policies, advisories,

1 procedures regarding every aspect of what we do, not to  
2 mention the change in personnel, it is amazing that we,  
3 and here we means the Board and the LEAs, we have  
4 continually moved forward adjusting to and meeting the  
5 new requirements without a hitch.

6           When I look back on it, especially when  
7 remembering the prospect of developing AB 1220  
8 regulations in 1980 -- 1994, and all the problems that  
9 would come out of that, I am impressed that it went as  
10 smoothly as it did.

11           I believe we have arrived at a point where the  
12 major concerns and most of the minor concerns as we  
13 understand them today are being addressed by the current  
14 system of LEAs providing the first tier of environmental  
15 protection, and the Board ensuring that this is being  
16 done while providing necessary support where and when  
17 required.

18           This system is not perfect, but it works. There  
19 will also be room for improvement. The system has  
20 demonstrated its flexibility time and again.

21           The introduction of any major change at this  
22 time would, I believe, detract from what is really  
23 needed, and that is a consolidation of all the processes  
24 and procedures that have occurred in such rapid fire  
25 order over the past decade, and continued improvement of

1 the existing order.

2           The Board's initiation of its policy review is a  
3 good start in this direction. As part of this effort I  
4 would suggest the Board look closely at its relationship  
5 with its LEAs, and develop specific policies that would  
6 promote the means to accomplish the statutory and  
7 regulatory requirements that govern this relationship.

8           A few years ago the Partnership 2000 program was  
9 adopted by the Board that attempted this in part. This  
10 program should not be allowed to die. There have been  
11 too many good things that have come out of this; such as  
12 the formation of an explicit LEA support section of the  
13 Board, and the LEA conference.

14           Its strongest attribute, though, is the  
15 commitment by both partners to work together in a manner  
16 far exceeding anything required by statute or  
17 regulation. This has only strengthened the overall  
18 protection of public health and the environment, and is  
19 contrary to the audit report that the environment and  
20 public health are at risk.

21           Many of the promoters responsible for the  
22 Partnership 2000 birth are no longer here, so it would  
23 seem that its sustenance is dependent upon a firm  
24 commitment by the Board that will formulate a policy that  
25 will survive, despite changes in personnel.



1           However, I believe that the most important  
2 things that remains to be done is for each participant in  
3 the Partnership 2000 alliance to carry out its statutory  
4 and regulatory mandate to its fullest extent for the  
5 Board to support the LEAs and ensure that the LEAs are  
6 properly protecting the public health and safety and the  
7 environment, and for the LEAs to do just that.

8           Questions?

9           BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.  
10 Hanson.

11           We are going to be taking our lunch break now.  
12 I had hoped to finish before lunch. However, we do have  
13 a number of speakers and the Board needs to decide how  
14 they want to take the next steps in addressing the audit  
15 report.

16           I want to thank the auditors for being here, I'm  
17 not sure if they can come back after lunch. But I want  
18 to thank you very much for taking the time to be here and  
19 listening to our concerns and our questions.

20           The Board, if we could be back at 2:00, we have  
21 a five minute closed session on a personnel matter, we  
22 can either do it now or right at 2:00. You want to do it  
23 at 2:00? But we won't be able to allow the public in  
24 until about five or ten after 2:00. Want to just do it  
25 now? Okay. It's very, very short.

1 BOARD MEMBER JONES: We have a requirement --

2 BOARD CHAIR MOULTON-PATTERSON: Yes, Mr. Jones  
3 has a -- I'm sorry, we have one more question.

4 BOARD MEMBER JONES: We have a requirement where  
5 we have sixty days to respond to whenever this went out,  
6 and that's February 11th. Our Board meeting is, in  
7 February is when?

8 BOARD CHAIR MOULTON-PATTERSON: I think it's the  
9 23rd.

10 BOARD MEMBER JONES: So the outcome of whatever  
11 we do today is the first, I don't know what you're  
12 looking for in sixty days, a plan or how we're going to  
13 proceed, what we agree with, what we don't agree with?  
14 What are you looking for?

15 MS. QUARLES: In the sixty day response we're  
16 generally looking for how you are going to address our  
17 recommendations.

18 If you feel you need additional time to review  
19 the issue then you should state that in the plan.

20 In the six month response, that should be more  
21 detailed as to the specific actions you've taken.

22 BOARD MEMBER JONES: All right. And I  
23 appreciate the audit, there are some things I really  
24 think we need that's going to make us a better  
25 organization. There are some I obviously think that show

1 half a picture and don't show the whole picture, and  
2 that's just a factor of understanding an integrated  
3 system.

4 I don't want to know so much about who on staff  
5 were sources for this information. I know part of the  
6 information was gleaned by people sitting in our audience  
7 and hearing debate or whatever. But I'm wondering who,  
8 who of the Board member offices were contacted for input  
9 into this process? Because I wasn't. Nobody had asked  
10 me a question. I'm just wondering if any of the Board  
11 member offices --

12 MS. QUARLES: The audit staff did not contact  
13 any Board members, we worked directly with Board staff.

14 MR. JONES: I mean Board member offices, not  
15 Board members. But there's an office, there's three or  
16 four people.

17 MS. QUARLES: We worked with Board staff.

18 BOARD CHAIR MOULTON-PATTERSON: Thank you. So  
19 you understand that if our sixty day report is not as  
20 detailed as we'd like it to be because we're a publicly  
21 noticed body, we, this is our first time to discuss it,  
22 and our next meeting is February 20th, 21st.

23 Thank you again for coming.

24 BOARD MEMBER MEDINA: I just had one question.

25 BOARD CHAIR MOULTON-PATTERSON: Oh, Mr. Medina.

1           BOARD MEMBER MEDINA: Yeah. I recognize and  
2 support the need for audits, and in various capacity over  
3 the year I have had to respond to audits. I am puzzled,  
4 however, at the practice of expressing very critical  
5 conclusions on the cover of the State Auditor's report,  
6 and just wonder what purpose does this serve.

7           And in this cover it says, "California Limited  
8 Authority Weak Oversight Diminish its Ability to Protect  
9 Public Health and the Environment." It makes for a good  
10 newspaper headline, and oftentimes that is all that the  
11 public reads and draws a conclusion from. But it does a  
12 great injustice to the department that is the object of  
13 the report.

14           We take your findings very seriously, and where  
15 appropriate we'll take the steps necessary to make  
16 improvements and to address your concerns. But I, for  
17 one, would like to see that practice changed, our, to  
18 have something on the cover that reflects the good work  
19 that this Board does.

20           But at any rate I do find it troubling that such  
21 statements are made on the very cover of a report that is  
22 a very public report.

23           BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.  
24 Medina.

25           Since we have your attention right now, may we

1 have like a five day extension after, say March 1st since  
2 we really would like to have our February Board meeting  
3 to finish discussions?

4 MS. QUARLES: I do not have the authority to  
5 grant that extension, but the Board could send a letter  
6 to the State Auditor.

7 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank  
8 you.

9 Okay. So we are going to take our closed  
10 session right now, we will clear the room real quickly,  
11 and be back around 2:00 o'clock.

12 (Thereupon the luncheon recess was taken.)

13

14

15

16

17

18

19

20

21

22

23

24

25

1 AFTERNOON SESSION

2 --oOo--

3 BOARD CHAIR MOULTON-PATTERSON: I'd like to  
4 call the meeting back to order.

5 Mr. Eaton, any ex parte? Oh, this was going to  
6 be handed out during a presentation, I guess.

7 Go ahead.

8 BOARD MEMBER EATON: I think we just received,  
9 the only ex parte I have is a letter from Paul Yoder from  
10 South Ways Association of North America, better known as  
11 SWANA, regarding the State Auditor's report.

12 That's it, thank you.

13 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.  
14 Eaton.

15 Mr. Jones.

16 BOARD MEMBER JONES: Brief conversation with  
17 Denise Delmatier, Richard Hanson, and my old LEA Tom  
18 Carmichael.

19 BOARD CHAIR MOULTON-PATTERSON: Mr. Medina.

20 BOARD MEMBER MEDINA: Same letter from SWANA,  
21 and Joe Montoya did not talk to me again.

22 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

23 BOARD MEMBER PAPARIAN: Yes, I had a brief  
24 conversation with Kent Stoddard of Waste Management  
25 regarding the audit.

1           BOARD CHAIR MOULTON-PATTERSON: Okay. I said  
2 hello to Justin Malan and that was it. Okay.

3           We were in the middle of our public comments on  
4 item number 32, the audit.

5           Mark Aprea.

6           MR. APREA: Good afternoon, my name is Mark  
7 Aprea, I'm here representing Republic Services.

8           First I'd like to thank Madam Chair and members  
9 the Board for the opportunity to appear before you today,  
10 and to address the issue of the state audit report.

11           First Off I want to state that the Republic  
12 Services wishes to wholeheartedly concur in the public  
13 and private sector letter that was submitted to you  
14 yesterday afternoon, some of you received it earlier  
15 today. We were unable to sign on only due to logistical  
16 difficulties yesterday in our getting approval for the  
17 letter.

18           I will be submitting a letter to you tomorrow  
19 formalizing that, and indicating our concurrence with all  
20 the points in that letter.

21           In particular today I wanted to focus in on the  
22 landfill capacity issue. And one, I don't want to take  
23 up too much of your time, but certainly Denise Delmatier,  
24 I think very well expressed our views on this.

25           But I think that in looking at the audit report

1 and the discussion subsequent to that, it appears that  
2 there is oftentimes a view only towards one part of the  
3 equation. You all, of course, will recall that AB 939  
4 not only required a fifty percent diversion, but also  
5 required that there be fifteen years of planned disposal  
6 capacity.

7 I think it could be argued that the Auditor  
8 failed to recognize that requirement and that, frankly,  
9 that they just got it wrong. Disposal capacity in the  
10 Northernmost reaches of the state don't help the County  
11 of Los Angeles one bit. And it failed to address, as was  
12 expressed in our letter, not only the fact that you can't  
13 measure the entire state's capacity, but that you've  
14 really got to address the location of the disposal,  
15 vis-a-vis the location of the points of generation. And  
16 that was never really adequately addressed in the audit  
17 report.

18 Furthermore, I think it could be argued that the  
19 requirement for fifteen years of planned disposal  
20 capacity is inadequate. Given the vagaries of siting a  
21 solid waste facility, given the cost, the long timeline,  
22 the changes in the economy, and the demographics, that it  
23 is difficult, and that planned disposal capacity doesn't  
24 mean permitted disposal capacity; it doesn't mean  
25 operational disposal capacity; and it doesn't address a



1 whole host those kinds of issues.

2           Furthermore, I think that although this Board  
3 certainly has a responsibility and a duty for purposes of  
4 oversight, it is those local elected officials who have  
5 the ultimate responsibility, and who will face the voters  
6 in the event that there isn't disposal, adequate disposal  
7 capacity.

8           Certainly each and every one of you understands  
9 that and can appreciate that whether you've held a  
10 position as a local elected official, or whether you've  
11 been engaged in the electoral process.

12           And so I would urge that all of you look at this  
13 issue, and that you do nothing that would place us  
14 further from having adequate disposal capacity. To  
15 suggest that we do so otherwise I think will run the risk  
16 that we, that each county and perhaps this state will no  
17 longer be able to control their own solid waste Destiny  
18 in terms of what they can do. And that that will  
19 encourage and, in fact, force folks to rely on disposal  
20 capacity over which they have no control, and which may  
21 be at far reaches from the points of generation.

22           Certainly we need to abide by and focus in on  
23 not only the diversion requirements and the market  
24 development issues, but we also need to make sure that  
25 there is that adequate disposal capacity so that we not

1 only satisfy the initial assumptions that were placed  
2 into law under AB 939, but that we also understand that  
3 we don't find ourselves in an imbalance down the road  
4 where we are, in essence, scrambling to figure out where  
5 are we going to put the solid waste.

6 The responsibility is not only for diversion,  
7 but also for adequate disposal capacity, and I think we  
8 need to look at both before we move forward.

9 Therefore, I would like to urge that this Board  
10 and its members do nothing that would put disposal  
11 capacity further out of reach.

12 We look forward to working with this Board, with  
13 the staff, and certainly with the legislature as they  
14 also look at this issue, and we'll encourage them to do  
15 the same. Thank you.

16 BOARD CHAIR MOULTON-PATTERSON: Thank you very  
17 much. I would like to note that although the Auditor's  
18 Office could not return, they've asked for a tape of the  
19 meeting so they will be getting your comments. Dan  
20 Avera.

21 MR. AVERA: Good afternoon, Madam Chair and  
22 members of the Board. My name is Dan Avera, I'm the  
23 Director of Environmental Health, San Bernardino County,  
24 I'm also Chair of the Solid Waste Policy Committee with  
25 the Directors of Environmental Health.

1           I will try to make my comments very brief  
2 because I know there's other people who would like to  
3 speak on this topic, and I'd just like to touch on a few  
4 points in the audit.

5           I think there has been a sense that some people  
6 had been somewhat defensive, the LEAs in particular, and  
7 I think Justin is very passionate about solid waste in  
8 the State of California, and I think that benefits all of  
9 us.

10           The couple issues as far as the conflict of  
11 interest, the policies that this Board has adopted in the  
12 past and now is currently reviewing, and the issue about  
13 what we need to do with AB 59 and whether or not that  
14 needs to be modified or changed.

15           The other thing is I think it's important that  
16 Cal EPA, and also with this Board undertaking the  
17 strategic planning process, I think that it's important  
18 that this Board be in sync with Cal EPA. Because at the  
19 local level, environmental health directors are enforcing  
20 a wide variety of environmental laws and regulations, and  
21 especially when it comes to enforcement, it would benefit  
22 us a great deal if those procedures and policies are  
23 consistent with one another.

24           I think one thing that needs to be clear, and  
25 sometimes the LEAs may be defensive, our goal at the

1 local level, how I make decisions on a daily basis is  
2 what are we doing to protect public health and safety and  
3 the environment. That's what we're all about. Whether  
4 there's a perceived conflict of interest or real conflict  
5 of interest, and whether we have dual responsibilities, I  
6 think what we, all of us in our profession of  
7 environmental health, our primary goal is to protect  
8 public health. And I think that has been recognized over  
9 the past, and I think our profession will continue to  
10 move in that direction in the future. So I think that's  
11 a critical point that needs to be stated.

12 With the conflict of interest, whether it's  
13 perceived or not perceived, the Waste Board has a role,  
14 and the Waste Board staff has an excellent reputation of  
15 evaluating the performance of the LEAs. And I, as a  
16 Director of Environmental Health, will support any effort  
17 to evaluate an LEA.

18 And if a particular LEA is not doing their job,  
19 then they need to be de-certified. And then let the  
20 state take over that responsibility and that  
21 jurisdiction. Directors throughout the state have no  
22 problems if there's a failure to enforce the statute, a  
23 failure to protect public health and safety, you will  
24 hear no oppositions from Directors of Environmental  
25 Health to decertify that LEA in the State of California.

1           A couple of things on enforcement. The Cal EPA  
2 is looking at improving enforcement throughout the State  
3 of California. And a couple of things I'm going to pull  
4 out of their strategic plan that I think are important.

5           Enforcement of the law must be consistent,  
6 predictable, fair, and equitable. LEAs need guidance,  
7 direction, counseling to ensure that the laws and  
8 regulations are enforced throughout the State of  
9 California in the same manner. My key point on  
10 enforcement in this state, based upon what we have to do  
11 with the statute and the regulations is, finally we need  
12 to adequately train our inspectors and enforcement  
13 personnel to meet our quick and sure justice designed to  
14 stop illegal activity as quickly as possible with the  
15 appropriate cross media coordination. It needs to be  
16 quick.

17           Our process of going through enforcement and  
18 issuing notice and orders and having the appeals process  
19 at the local hearing panel and then appeal to the Waste  
20 Board and going through the administrative civil  
21 penalties process is very time confusing and very  
22 cumbersome.

23           E-mails have been flying back and forth over the  
24 last several weeks regarding the audit. There's one  
25 county that I thought had a very interesting way of

1 dealing with some enforcement action. They have a  
2 service charge for every notice and order that they issue  
3 of \$900. So the operator gets to pay \$900 for every  
4 notice and order that is issued. And if there's  
5 non-compliance with that notice and order, there's an  
6 additional fine of a thousand dollars.

7 Now whether that's, they're doing that through  
8 the statutes or the regulations, I doubt that, but that  
9 is a mechanism where they may be getting the attention of  
10 the operator.

11 One last comment on environmental protection and  
12 the protection public health, also in Cal EPA's strategic  
13 plan. "Progress through achieving our goals will be  
14 measured by environmental results, not by counting  
15 permits issued or fines collected."

16 I'd like to at this time offer CCDH's and the  
17 Solid Waste Policy Committee, we participated in the  
18 rulemaking process, I think with the PET policy and the  
19 long term violation policy, those things; in the future  
20 we will continue to work with your Board and your staff  
21 to continue to protect public health and safety.

22 Thank you.

23 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.  
24 Avera.

25 BOARD MEMBER EATON: Can I ask Mr. Avera a

1 question?

2 BOARD CHAIR MOULTON-PATTERSON: Mr. Avera, a  
3 question.

4 BOARD MEMBER EATON: Mr. Avera, within the AB  
5 59, a recognition of the quandary sometimes, rather than  
6 call it a conflict of interest, dual obligations  
7 sometimes could be where you were in a situation with  
8 your AB 59 appeal wherein the selection of the local body  
9 was to go to an independent board for whatever reason,  
10 and within AB 59 there are alternatives for either having  
11 the Board or a local governing body sit at that local  
12 hearing, or they have the option to go out and appoint an  
13 independent body. And in your case, in San Bernardino  
14 they went to an independent body.

15 MR. AVERA: Correct.

16 BOARD MEMBER EATON: So that's, that was an  
17 inherent recognition by the legislature that those are,  
18 and that's just one example you were kind of talking  
19 about, where there is a recognition, and that there are  
20 structural or legislative tools already in place.

21 MR. AVERA: And I should say, though, in San  
22 Diego County the independent hearing panel when I was in  
23 San Diego County, the Chairman of the Board of  
24 Supervisors actually chaired the independent hearing  
25 panel; so there's two people from the public, and the

1 Chair of the Board of supervisors actually chaired the  
2 independent hearing panel.

3 BOARD CHAIR MOULTON-PATTERSON: Next is Jim  
4 Hemminger.

5 MR. HEMMINGER: Thank you. My name is Jim  
6 Hemminger. I'm representing the Rural Counties  
7 Environmental Joint Powers Authority. We have 21 member  
8 counties throughout the state.

9 We appreciate the opportunity very much to  
10 present on behalf of the counties some information and  
11 feedback on the Auditor's report.

12 Generally this report, as other speakers have  
13 mentioned, raised serious concern with our member  
14 counties. There is disagreement with many of the  
15 findings, and serious concerns about the consequences if  
16 the recommendations of the report were, in fact,  
17 implemented as they were put forward.

18 Without being critical, I think there should be  
19 a real understanding of the difficulties that was  
20 undertaken in trying to prepare this report and the way  
21 in which it was prepared. But nonetheless, and perhaps  
22 as a result of those considerations, I would concur that  
23 a lack of historical perspective in many respects, and  
24 there are various issues, it seems as though they took  
25 one or two individual circumstances and perhaps over



1 generalized based on the results.

2           The report, I guess out of necessity, was done  
3 discreetly, if that's the right word. I've talked to our  
4 member counties, I think maybe Mono County did get a  
5 phone call about trickle landfills, but I haven't been  
6 able to find out those jurisdictions that were polled or  
7 involved in the report preparation.

8           And I appreciate Board member Jones' concern  
9 that it could be helpful, if it were possible within the  
10 constraints of this, to get some idea of where the basis  
11 was of this report, perhaps who had input it from the  
12 jurisdiction, and more importantly, who didn't. And then  
13 we could help provide additional information to  
14 supplement what may have been offered there.

15           Of all the issues, this seems to be one issue  
16 where folks with a wide range of disparate  
17 responsibilities beyond which I've hardly ever seen on  
18 any other issue, find themselves pretty much in  
19 congruency; talking enforcement agencies, enforcement  
20 people, we're talking operators, we're talking rurals,  
21 we're talking urbans, we're talking counties, we're  
22 talking cities.

23           This congruency doesn't necessarily make any  
24 anything I say or other folks correct or valid, but I  
25 think it is sufficient to raise concern and warrant a

1 certain amount of attention and more analysis into the  
2 recommendations, some of the recommendations before they  
3 are implemented.

4 And I do appreciate the Chair's request to get a  
5 little bit more time to respond to the report.

6 I know many of our member counties, and it's  
7 counties who are actually on the front line for a lot of  
8 AB 939 for not meeting diversion goals. They are the  
9 ones who are going to get fined for being out of  
10 compliance and in not meeting diversion goals. They are  
11 the ones who will have find the money and the resources  
12 to do whatever studies may be required.

13 Many of the counties are going to be going to  
14 their Board of Supervisors and getting resolutions from  
15 their elected officials. And we did, on behalf of the  
16 counties, submit a letter on January 4th which I'll refer  
17 to but not go over in detail, which generalized some of  
18 the concerns.

19 But individual counties do have specific  
20 concerns and if we do, if the Waste Board is able to get  
21 an extension of the February 11th deadline, it would give  
22 our counties the opportunity to let their elected  
23 officials provide input into their feelings on the  
24 report.

25 I won't go through each of the recommendations

1 in specific, but there are a few issues that are specific  
2 to rural jurisdictions, and I would like to touch on  
3 those briefly.

4           The first one is the so-called trickle or  
5 trickling landfill. We do a lot of acronyms, and I think  
6 this is the only cute phrase that we actually deal with  
7 in solid waste.

8           Trickling landfills, small volume landfills, in  
9 the audit report pretty much indicated, or at least I got  
10 the impression this was some type of loophole that was  
11 being used inappropriately as a mechanism to delay  
12 closure.

13           That's true in some cases. As mentioned before,  
14 rural counties operating a landfill were hit with  
15 Subtitle D requirements and didn't have the weight,  
16 didn't have the waste stream or the resources to comply.  
17 Many of them elected to ship their wastes out and found  
18 themselves with a landfill without money to do the  
19 closure.

20           Up to then deposits to the closure fund were  
21 based on percentage of capacity used. Anticipating full  
22 use of the capacity, they were responsibly putting away  
23 into the closure fund. Subtitle D changed that, and many  
24 counties are struggling to find money to move ahead with  
25 closure.

1           But as reported in the staff report, and I would  
2 like to actually really appreciate the staff report that  
3 was prepared for this item. It did give, I thought, a  
4 little more balanced perspective on the trickling  
5 landfills themselves.

6           They do serve a purpose, particularly in rural  
7 areas. There's all sorts of dynamics with rates going up  
8 and where garbage can be going and who will accept  
9 garbage. If you keep a landfill open you do have a  
10 disposal source within your own jurisdiction that's under  
11 your control.

12           Also to save money, counties don't necessarily  
13 ship everything out. There may be C and D debris or some  
14 Class II waste that makes sense to keep in the county and  
15 ship the rest out.

16           So there may be concerns and there's ways we can  
17 help counties close those landfills that should be  
18 closed, but I would like to put forth that there are  
19 legitimate reasons to continue operating low volume  
20 landfills.

21           I'm a little defensive -- defense is the wrong  
22 word -- a little additional information on publicly  
23 operated landfills. I'm probably a little defensive  
24 because I was ten years responsible for a small publicly  
25 operated landfill. There are particular problems there,

1 but also there's a lot of very, very well run, a lot of  
2 environmentally sound landfills.

3           There are, publicly-owned operators seem to be  
4 on the top of the list of continuing violators. But I  
5 don't see that as an indictment by any means of the  
6 publicly operated landfills as a whole.

7           What's happened over time, of course, is that a  
8 lot of publicly-owned landfills have been purchased by  
9 some of the larger waste management companies who run  
10 them well. Some of the more troublesome landfills  
11 weren't those that were purchased, and they stayed within  
12 the public realm operation.

13           And most of the publicly operated landfills on  
14 the list are older, and they were constructed in  
15 accordance with standards that existed at the time, but,  
16 and most of them do have the gas violations, and we do  
17 need to move forward and work with them to see how we can  
18 correct those violations. But those number of landfills  
19 on that list I don't think are characteristic of publicly  
20 operated facilities in general.

21           I have two more points I want to make and then  
22 I'll move on. One is a little bit with LEA, and one is  
23 with AB 939. I never thought as an operator I'd ever be  
24 before the Waste Board saying positive things about the  
25 LEA. I spent years arguing about what's litter and what

1 is six inches of daily cover, and it was seldom that we  
2 agreed.

3           The LEA was an environmental health person  
4 employed by the county but, and I certainly, we have to  
5 acknowledge that, the dual obligations; but there's a  
6 flip side of that coin that I felt I operated under, and  
7 maybe other jurisdictions did too.

8           My LEA was well aware of the perceived potential  
9 conflict of interest, if you will, and I really was of  
10 the opinion that more often than not because of concerns  
11 that he could be accused of any potential conflict, there  
12 was a tendency to go overboard with the public operated  
13 facilities rather than they would have with private. I  
14 could be wrong, but that was my perception.

15           This direction from our Board of Supervisors was  
16 not to let Jim Hemminger off the hook and run a shoddy  
17 landfill, this direction from the Board of Supervisors  
18 was do what you need to maintain your state  
19 certification.

20           And I'm sure there are problems with LEAs with  
21 public facilities, with private facilities, but again, to  
22 extrapolate, and I just really appreciate what was said  
23 before, there may be problems and let's look at a way of  
24 dealing with that.

25           Representing 21 rural counties there's some

1 irony here. I've spent the last couple days with Cal  
2 EPA. And DTSC, Department of Toxics as most people know,  
3 is trying to implement the Cooper program which basically  
4 is requiring local jurisdictions to take over a lot of  
5 the state programs.

6 Rural counties don't want it, it's expensive.  
7 DTSC is saying take it, and actually there are some  
8 legislation giving rural counties some money to get them  
9 to take it.

10 Once DTSC gets these responsibilities to the  
11 rural counties, the rural environmental health people  
12 then are going to be responsible for inspecting our HHW  
13 at the landfill. They are going to be permitting our  
14 hazardous waste collection days.

15 So there's a real irony here as far as the  
16 extent of local control versus state control, and there  
17 is some consistency. And in looking for, with the Cooper  
18 program maybe could be applied to the LEA. Because on  
19 the one hand the state is saying the locals control it,  
20 and to look maybe at the similarities of these two  
21 programs so we don't end up going in two different  
22 directions where we have the local folks inspecting half  
23 of the landfill or part of the landfill and the Waste  
24 Board the other.

25 My closing remarks will be about AB 939. I've

1 said this before. We're worried, especially in rurals,  
2 about more reporting, more counting. The audit report  
3 seems to feel five year base -- every five years in the  
4 base year would somehow help.

5 Please, before rural, requiring rural counties  
6 to do more studies, more counting, make a realistic  
7 assessment how much more accurate the numbers will be.  
8 They may be able to be taken to more decimal points, but  
9 I'm not sure that doing new base year studies every year  
10 is really going to give us a number that accurately  
11 reflects the diversions that is going on in the  
12 particular counties. It is very, very difficult to  
13 quantify.

14 We support the recommendation at the Bureau of  
15 Audits to get some legislative clarity if that's needed  
16 so as not to go further with the number counting.

17 But I would like to say I think there's a lot of  
18 existing legislation which really focused in on the  
19 programmatic aspects of this. We're supposed to adopt  
20 planning documents that require programs which would  
21 allow us to implement the fifty percent. We're  
22 implementing those programs. If those programs aren't  
23 adequate, then the SRE gets reviewed and it gives us more  
24 program implementation.

25 Especially for rural counties, a small



1 percentage of the state waste load, further attempts to  
2 refine exactly what number we're getting I think could be  
3 counterproductive as we move forward with this process  
4 and the different workshops. I'd just like you all to be  
5 able to consider that.

6 Thank you.

7 BOARD CHAIR MOULTON-PATTERSON: Thank you very  
8 much.

9 Joseph Montoya.

10 MR. MONTOKYA: Madam Chair and members of the  
11 Board, perhaps this will facilitate anybody having to  
12 report. I guess the best way for a Joe Montoya to report  
13 is publicly, that way none of you have to do an ex parte  
14 that wonders, well what are you people talking to a  
15 convicted felon about.

16 But there again we can learn, and what I want to  
17 relate to you is, are some philosophical points. I think  
18 over the last year we've learned that there are convicted  
19 felons, unconvicted felons, pardoned felons, and  
20 unpardoned felons. I fall in that group. But we've come  
21 a long way since the Clinton administration. So I hope  
22 you won't be embarrassed to talk to me privately or  
23 publicly.

24 There were a couple of points that I wanted to  
25 make relating to, and I was hoping that the Auditor would

1 be here. I went through and looked at the two tape film  
2 of the Auditor General report that was brought as a  
3 consequence of the hearing by Senator Alarcon. And if I  
4 can give you that perspective. And Senator Roberti is  
5 not here to confirm what I am about to say.

6           You know, one of the old political tricks is when  
7 you get upset with an agency or a department, what you do  
8 is you sic the Auditor General on them, and that way you  
9 can accomplish that goal plus some others.

10           I felt after watching both of those tapes and  
11 not only looking at the report but watching the visual  
12 reactions, that I thought the Auditor General was a  
13 little bit feeling that, was kind of in that situation,  
14 kind of like in the political hot seat.

15           I thought that generally the bottom line of the  
16 Auditor General saying was to add one more nail to the  
17 coffin of doing something in Sunshine Canyon.

18           And of course, being one mile and a half from  
19 the Puente Hills Landfill and living next door to the  
20 Athens Transfer Station, I don't know that it's not time  
21 for the west side, or what I consider the west side from  
22 where I sit geographically, to take part of the trash in  
23 their part of town. But I'm sure that Senator Roberti  
24 would disagree with that.

25           But I felt, anyway, that that was a part of that

1 Auditor's report was don't put Sunshine Canyon in our  
2 backyard, or back to work, or else we're going to try to  
3 send you to jail.

4 But I thought that that can be a very good point  
5 of departure for some of the things that I think that  
6 perhaps the Board could do. And there's been a lot of  
7 focus, I thought, on the little things. Like there were  
8 three specific things that I wanted to mention.

9 Number one, the Auditor General indicated,  
10 "Explore its options for taking into account the  
11 necessity for increased landfill capacity as a factor in  
12 granting permits."

13 And I think there the Board has to kind of take,  
14 should take a world view, and it's in a particularly good  
15 point to take a world view as a Board because you have  
16 great balance on this Board. You've got two local  
17 government people, you've got the pro tem, we've got a  
18 legislative staffer, you've got a man who proudly defends  
19 private enterprise and profit, which I commend you for,  
20 Steve, there's nothing wrong with profit, folks.

21 BOARD MEMBER JONES: They didn't have to guess.

22 (Thereupon occurred simultaneous discussion.)

23 BOARD MEMBER EATON: I think Denise does better  
24 compliments.

25 MR. MONTROYA: But I think that the Board is in a

1 unique situation to carry upward the need for legislative  
2 changes. And I think the most significant one, again  
3 from a world view of solid waste management, is this  
4 Board is never going to be able to do its job adequately  
5 so long as it can't take into account regional  
6 considerations.

7           What is good for San Diego, what is good for  
8 L.A., what is good for San Francisco may not be good for  
9 the rural counties or some of the not so urbanized  
10 counties of this state.

11           And I don't think it means that the state has to  
12 take over the responsibility of local government, but  
13 certainly why couldn't, on a regional kind of basis, work  
14 along the lines of however California's divided with the,  
15 with CSAC, with the county supervisors. I know that the  
16 League of Cities has like three or four regions.

17           So on that kind of a basis should be considered  
18 where you're going to allow the landfills. Because I  
19 think that there has to be a consideration on a regional  
20 basis. Like even in Los Angeles, like I say, why should  
21 we, why should we in my backyard receive two-thirds of  
22 the tonnage that goes in the L.A. county landfills.

23           So I think if you divide up the state, it could  
24 easily be done based on a regional basis based upon CSAC  
25 lines or League of Cities lines, or even a grid. But as

1 long as you don't, as long as you're just looking at the  
2 overall picture you don't know if we need one in the  
3 northern counties or in the central valley or down south,  
4 as well as if you're doing it on a regional kind of a  
5 basis.

6 Secondly, point three was develop a proposal for  
7 incorporating environmental justice into its permitting  
8 process, and submit the proposal to the California  
9 Environmental Protection Agency.

10 There again, on the issue of environmental  
11 justice, I share your concern, Mr. Medina, but I think  
12 it's kind of become one of those divisive things. And I  
13 have a book that I recommended to Mr. Jones, to Mr.  
14 Eaton, and I think he may have gotten this from Mr.  
15 Medina, and I'd like to, in a shameless act of kissing  
16 up, offer this to the Chairwoman of this Board, "The  
17 Promise and Perils of Environmental Justice."

18 And I want to take just one comment from that at  
19 the back.

20 "This provocative and timely volume assesses  
21 the achievement and pitfalls of the  
22 environmental justice movement which contends  
23 that low income persons and communities of color  
24 disproportionately bear the burden toxic ways  
25 sites hazardous jobs and polluted air and water.

1                   "While acknowledging the understandable  
2                   grievances that have spawned the movement,  
3                   Christopher Foreman criticizes its inability to  
4                   generate a focused policy agenda.

5                   "This book calls for a better informed  
6                   public dialogue and outlines alternative  
7                   pathways to enhance collective health and  
8                   neighborhood livability."

9                   And I'm sure that all of this business being  
10                  politics, like it will always be, that it will be the  
11                  poor neighborhoods, it will be the people that are not as  
12                  politically organized in which these burdens are going to  
13                  fall.

14                  So I think one of the options is to look at  
15                  this, and the second thing is perhaps to do like other  
16                  countries do, if you live in an area where there's a  
17                  public hazard of one kind or another, where like in Japan  
18                  where you have nuclear power plants, those people are  
19                  given special financial consideration or there is  
20                  financial mitigation.

21                  But to think that you've made a statement about  
22                  environmental justices and now you're concerned about  
23                  black folks or brown folks or poor white folks, that  
24                  that's going to resolve anything, it's not. Those things  
25                  are going to go on there.

1           So the solution is to financially mitigate those  
2 problems because they're not going to go out of those  
3 neighborhoods.

4           So I'd like to give that to you, Madam Chair.  
5 If it's legal?

6           BOARD CHAIR MOULTON-PATTERSON: Do I need to  
7 declare this?

8           CHIEF COUNSEL TOBIAS: Probably.

9           BOARD CHAIR MOULTON-PATTERSON: Thank you.

10          MR. MONTOYA: And another consideration that  
11 wasn't in that, in that report is, and should be of the  
12 Board's concern, is the consolidation and monopolization  
13 that is going on.

14          If we have just two or three companies in this  
15 state that do the landfilling, and they've got the  
16 franchises and they've got the landfills also, and we are  
17 moving in that direction, I'm trying to think of the  
18 young man who has that report from the statewide  
19 association of the small companies; then I think  
20 eventually you will be faced with the problems that we  
21 have seen in the energy field.

22          So there are future ramifications, and I think  
23 that this Board, as I've said, is uniquely situated to,  
24 from the Board level up to the legislature, to bring  
25 about some changes.

1           So I'd like to thank you for your time and  
2   consideration.

3           BOARD CHAIR MOULTON-PATTERSON: Thank you,  
4   Senator Montoya.

5           Paul Yoder.

6           MR. YODER: Good afternoon, Madam Chair and  
7   other members the Board.

8           I'm just going to summarize SWANA's comments on  
9   the State Auditor's report and then sort of make an  
10   editorial parting comment since today seems to be a good  
11   day for editorial comments.

12          SWANA's view of the report can be summarized  
13   primarily in four categories.

14          One. This Board does not need nor should it  
15   seek additional statutory authority with respect to the  
16   recommendations in the report.

17          Two. The decertification of LEAs is a tool that  
18   is already available to the Board and is adequate to  
19   address the relevant concerns raised by the report.

20          Three. Any intrusion by the Board into the  
21   solid waste marketplace relative to landfill capacity or  
22   siting issues would be unwarranted and disastrous.  
23   Landfill capacity is not a threat to diversion programs,  
24   and integrated systems that focus on efficiency and  
25   effectiveness.



1           Landfill capacity is a needed element to ensure  
2 cost effective disposal and a regulatory system that  
3 mandates significant costs in years relative to  
4 permitting and operating. Decisions regarding landfill  
5 capacity should be dealt with based on local conditions  
6 and concerns.

7           Fourth. The Board should focus on the quality  
8 recycling programs and market development rather than  
9 preoccupy itself with attempting to quantify diversion to  
10 the tenth or hundredth of a percent.

11           I'll just leave you with the thought that it's  
12 disturbing, I think, to SWANA that anyone, let alone any  
13 member of this Board, would use the Auditor's report as a  
14 guidance document.

15           On behalf of SWANA I want to respectfully submit  
16 to you that the only guidance documents this Board should  
17 be utilizing right now are existing state law and  
18 existing regulations.

19           Thank you.

20           BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.  
21 Yoder.

22           Paul Manasyan.

23           MR. MANASYAN: Good afternoon, Madam Chair,  
24 distinguished Board members. My name is Paul Manasyan,  
25 I'm manager of the City of San Diego Solid Waste Local

1 Enforcement Agency.

2 I thank you for this opportunity to respond to  
3 this Auditor's report, and my comments will be brief and  
4 directed towards two points.

5 One, the general premise of the Auditor's  
6 report; and also the issue of conflict of interest.

7 One. The premise of the report is basically  
8 that public health, safety, and environment is  
9 jeopardized right now because of weakly, because of  
10 weakly regulated facilities. And that is based on the  
11 assumption that we are missing a component in this  
12 process, a very important component, and that is the role  
13 of the LEA in this process.

14 The entire burden in this report of protection  
15 of public health and safety is placed on the Waste Board,  
16 and it totally disregards our partnership. Our  
17 partnership that has been defined by the legislature in  
18 statute through AB 1220.

19 Please bear with me. I want to read this  
20 section to you because I think it's very important and it  
21 provides clarity as to what our roles are. This comes  
22 out of the PRC and it says, "The intent of the  
23 legislature is to accomplish the following:" And point  
24 number eight is:

25 "A clear and concise division of

1           responsibilities shall be maintained to  
2           minimize overlap and duplication of  
3           permitting, inspection, and compliance duties  
4           between the Board and the certified Local  
5           Enforcement Agencies.

6           "The Board's primary role in regard to  
7           permitting and compliance shall be to provide  
8           technical assistance and ongoing training and  
9           support to Local Enforcement Agencies to ensure  
10          a local enforcement agency's performance in  
11          complying with state minimum standards, and to  
12          review permits and other documents submitted by  
13          Local Enforcement Agency for Board concerns,  
14          concurrence, or approval.

15          "The Board shall strengthen the state  
16          certification and evaluation program for Local  
17          Enforcement Agencies and shall set clear and  
18          uniform standards to be met by Local Enforcement  
19          Agencies."

20          This sets the framework by which our partnership  
21          is set up. We can ensure compliance in the protection of  
22          public health and safety. In this partnership you  
23          provide us the technical assistance and support; you  
24          provide us ongoing training; you review the documents we  
25          submit to you, including enforcement orders as well as

1 solid waste facilities permits for your concurrence; you  
2 certify us; and you evaluate us on a routine basis, you  
3 evaluate elements of our program as well as in carrying  
4 out our enforcement duties; and you also set clear and  
5 uniform standards for us to follow.

6 I would have to say that when you look at this  
7 report it seems as though it makes emphasis on this  
8 eighteen month inspection, as though that is the only  
9 thing that is your role in monitoring the LEA, and that  
10 is not true.

11 I want you to know that my staff and I deal with  
12 your staff on a weekly basis in interchanging  
13 information, transmitting inspection reports, and the  
14 latest developments that occur in the jurisdiction that  
15 affect both of us.

16 And when it comes to issuing an enforcement  
17 order or a permit, we are dealing with your staff on a  
18 daily basis.

19 One of the reasons, I think Senator Roberti was  
20 concerned that we submit so many permits to you that you  
21 so rarely object to them, the reason is that there's so  
22 much preparation beforehand, before that permit gets to  
23 you. I can't tell you how many times, "Oh, Senator  
24 Roberti is not going to like this, we're going to have  
25 this in here," or, "Mr. Eaton is not going to like this,

1 we're going to have to address this concern." they are  
2 watching out for your concerns.

3 So when we bring a product to you we hope that  
4 it's brought to you in a form that you are going to be  
5 happy with it. And your staff are working hard to do  
6 that.

7 And that is part of this very important  
8 partnership that has developed over the last six years  
9 and has resulted from this AB 1220. I think if you spoke  
10 with your staff they would agree with you that the  
11 performance of LEAs has improved tremendously, and it's  
12 because we have, the legislature has the wisdom to divide  
13 these responsibilities amongst the Board and the LEAs so  
14 that we can reach this common goal of compliance at solid  
15 waste facilities.

16 And I would hate for this report to result with,  
17 in any kind of changes to the legislature that would  
18 jeopardize this very valuable relationship that we have  
19 developed.

20 The next point that I would like to speak on and  
21 I can't, I can't resist, Senator Roberti.

22 BOARD MEMBER ROBERTI: It's quite all right.

23 MR. MANASYAN: Because it's this issue of  
24 conflict of interest that's very dear to my heart, and  
25 Mr. Jones can tell you, that my agency almost did not get

1 certified over this issue because there was a perceived  
2 conflict of interest between the city and their proposal  
3 to become LEA and regulate the local marketplace; because  
4 the city too owns a major landfill in the jurisdiction,  
5 and is the major waste hauler within that jurisdiction.

6 I took on the responsibility to be manager of  
7 that LEA program, and I was told, when I was hired, that  
8 my primary priority would be to protect the public health  
9 and safety of the citizens of San Diego. And I took that  
10 to heart.

11 And the, one of the previous gentlemen mentioned  
12 that he felt that the LEA was harder on him than he was  
13 on a public operator, and you know what, I probably am,  
14 but don't tell Mr. Ettler. I probably do hold the city  
15 up to a higher standard because I'm so sensitive to this  
16 issue of conflict of interest.

17 The thing, too, that you have to understand, and  
18 I hope you appreciate this, that every day I put my job  
19 on the line. Everytime I find another burn site where  
20 the city is potentially a responsible party, and I'm  
21 going to be costing the city millions of dollars, not  
22 once has the city come to me and said, "Hey, lay off."  
23 Not once.

24 So I really take it to heart that comment you  
25 made when you stated that we have two masters, and our

1 first master would be our public agency and second comes  
2 public health and safety, that's not true.

3 BOARD CHAIR MOULTON-PATTERSON: I didn't quite  
4 put it that way.

5 MR. MANASYAN: Well that was the implication and  
6 I --

7 BOARD MEMBER ROBERTI: And that's fair enough  
8 that you felt it that way, but that's not quite what I  
9 said. I did say the first, I tend to think, is the  
10 public agency.

11 MR. MANASYAN: Well I have to say in my mind and  
12 all the LEAs I know I don't think that's true, I really  
13 don't believe it. I know I can speak for myself because  
14 I couldn't go home, I couldn't sleep with a clear  
15 conscience if I didn't put public health and safety  
16 first, because that made it, that is my profession. I'm  
17 a Registered Environmental Health Specialist, registered  
18 with the Department of Health Services in the State of  
19 California to protect public health and safety.

20 BOARD MEMBER ROBERTI: I understand how you're  
21 looking at this. I don't demean another obligation  
22 people have as fiduciaries. A fiduciary to a person,  
23 another obligation as fiduciaries. A fiduciary to the  
24 person you, who entrusts you with advising them, who  
25 hires you, who in effect represents the public. The

1 public is all us entities, not just the health and  
2 safety, but the public is all specific entities, and  
3 that's important too.

4 And we cannot diminish that as being a lesser  
5 pressure, it's not. I know we disagree, but it's not a  
6 lesser pressure. And that's why you have a conflict.

7 MR. MANASYAN: Well all I can say is in my  
8 fifteen years of being an Environmental Health  
9 Specialist, that not once have I been approached by  
10 management to back off on any operator, be it --

11 BOARD CHAIR MOULTON-PATTERSON: I don't think  
12 that's what I said. I'm not saying that doesn't occur,  
13 no. It's, it's the pressure, it's the conflict, whatever  
14 the word is, that occurs, some conscious, some sub rosa,  
15 in the conduct your responsibilities.

16 I think there is a misstate in here, a  
17 misfeeling, misconception by you or Mr. Malan, talk about  
18 him again, which I don't choose to do, I think he's a  
19 fine person, where you think that the implication is that  
20 somebody got to you. No, that's not the issue. That's  
21 usually not the problem with conflict.

22 Conflict is where you have cross internal  
23 pressures, cross responsibilities, cross duties, and that  
24 you try to find some laws that will relieve people of  
25 this problem.



1           If I was a fiduciary of an individual or of a  
2 public entity who employed me, who represented the  
3 public, who represented the civic body and all its  
4 responsibilities, and that the taxpayer, the voter, the  
5 nation, I would feel I have a responsibility to let them  
6 know what's happening, not because I want to compromise  
7 the health and safety of the public, but because that's  
8 my responsibility.

9           And you have these cross responsibilities as, I  
10 might point out, our famous letter here from Mr. Charles  
11 Byrd, Division of Environmental Health, who I think in a  
12 moment of extreme candor, but candor nevertheless, stated  
13 in a part that Mr. Paparian didn't read, "It has long --"  
14 and he's an LEA and a health professional.

15           "It has long been recognized by many LEAs  
16 that not only, that the only way to eliminate  
17 the intimidating environment in which we work  
18 and in the process to measurably improve  
19 enforcement would be -- in his words not mine --  
20 to convert all LEAs to state employees."

21           BOARD MEMBER JONES: So he's looking for a  
22 funding source.

23           MR. MANASYAN: I think he's pulling your leg.

24           BOARD MEMBER JONES: He's looking for a funding  
25 source.

1               BOARD MEMBER ROBERTI: No, he is not looking for  
2 a funding source.

3               (LAUGHTER.)

4               BOARD CHAIR MOULTON-PATTERSON: Excuse me.

5               BOARD MEMBER ROBERTI: Well I think the laughter  
6 in the audience also indicates a problem that we have.  
7 All we hear from here, Madam Chair, is the overwhelming  
8 drum beat of the stakeholders and of the people who have  
9 an interest before this Board, and not the public; not  
10 the public.

11              I don't mind that because I've been in the  
12 legislature for a long time. But I take exception to the  
13 Laughter because you represent a specific single interest  
14 that the drum beat has pressured, has hit, has pounded  
15 this Board over ten years, ten years of a constant drum  
16 beat that has rendered this Board into almost, almost, in  
17 some area, impotence.

18              MR. MANASYAN: Senator Roberti, I apologize for  
19 my comment, I didn't mean to elicit laughter, I just know  
20 Charlie, and I'm sorry, I just, I didn't mean any  
21 disrespect in that comment.

22              But I do feel that still the accusation is that  
23 somehow our position is compromised and that we can't  
24 effectively operate as your certified Local Enforcement  
25 Agency to administer permitting, enforcement, and

1 compliance programs on the local level.

2 And there must be some point, if that's the case  
3 then, and in all seriousness I echo the statements of Dan  
4 Avera in that I am one LEA who really believes strongly  
5 in a very strong effort on your part to evaluate LEAs,  
6 and one the criteria you need to evaluate is this area of  
7 conflict of interest.

8 And if that is the case, if he, if he is saying  
9 that he is too intimidated to carry out his mandate to  
10 protect public health and safety, then I think that is a  
11 very, very serious accusation.

12 BOARD MEMBER ROBERTI: He did not say that.

13 MR. MANASYAN: The implication is there.  
14 There's this intimidation on the level to prevent him  
15 from carrying out his mandate, and that should not be  
16 there.

17 And maybe that could be resolved to some by  
18 bringing in the intimidators who are at local government  
19 so they can understand the need of a local regulator be  
20 impartial, to be able to carry out their mandate to  
21 protect public health and safety.

22 And maybe that, maybe they should be put on some  
23 type of work plan, this should be part of the  
24 evaluation. Because this really concerns me, this  
25 allegation. Because it reflects on my profession, on all

1 us throughout the state as LEAs.

2 I have to be frank with you. We often hear this  
3 comment that, "Well, it's not you guys in the south it's  
4 those guys up north that are kind of a problem, and  
5 that's why we got to do all this stuff." I mean, if  
6 that's the case, we want everybody to be operating at the  
7 same standard, we take our jobs seriously.

8 And that's why, again, I apologize to you on  
9 that, but to me, I take my job seriously. My integrity  
10 is all I have. I'm just a public servant, right, and so  
11 I take my job seriously and I allow --

12 BOARD CHAIR MOULTON-PATTERSON: I don't want to  
13 belabor the point.

14 MR. MANASYAN: Right. Okay.

15 BOARD MEMBER ROBERTI: But certainly not I am  
16 challenging your integrity. We all live under the laws  
17 under which we have to operate, and those laws create  
18 conflicts.

19 That doesn't, because we're human beings who are  
20 conflicted because of dualing responsibilities that we  
21 have. Why someone views this as a challenge to their  
22 integrity because they can't be a square circle escapes  
23 me.

24 Nobody is challenging your integrity, certainly  
25 not me. I am saying, however, that human beings find,

1 any human being would find it impossible, my words,  
2 impossible to serve two masters in this case; the  
3 specific entity that employs them, and then the  
4 responsibility of the law under which they are operating,  
5 both which they have duties to.

6 MR. MANASYAN: You know what I do is I've got  
7 the city convinced that I work for you and that's how I  
8 resolve, I tell them you must think of me as an  
9 extension.

10 BOARD MEMBER ROBERTI: Then you ought to run for  
11 office, you're a good politician.

12 MR. MANASYAN: No, I really do this, and they're  
13 even convinced I work for you. Ahh, the LEA, the state  
14 and the LEA, you know. And it's, that's what you have to  
15 do.

16 And I, and again I think Mr. Jones was there  
17 through this whole -- we almost did not get certified. I  
18 mean Mr. Jones can testify to that, that it was very  
19 close, and it was all on this issue of conflict of  
20 interest.

21 So I'm, maybe I'm going a little bit overboard,  
22 but I think of myself as part of you. And you know what,  
23 Senator Roberti, it's reinforced by this partnership that  
24 we have been developing over the years. I called your  
25 staff all the time. I ask 'em advice, "What do you

1 think?" I send drafts, "What do you think about this?"

2 I think of ourselves as a partnership.

3           That's why I feel a little bit almost, I'm  
4 trying to think a word that's not offensive, but an  
5 unwanted child sometimes when it comes to, because I hear  
6 this -- it's almost opinion, it's like us and them. From  
7 your perspective it's the LEAs. I think there was one  
8 comment made on a permit or something that it's your vote  
9 against the LEA, and that's not the way I can see it.

10           I see myself as an extension of you. You've  
11 certified our agency to carry out our mandate. And we,  
12 we administer the local program, you give us the guidance  
13 on how to proceed, and together we have a wonderful  
14 partnership that I think Dick Hanson made a perfect  
15 example of how things, how this partnership has worked  
16 and how successful we've been.

17           BOARD MEMBER ROBERTI: Let me say it one more  
18 time, I think you do an excellent job with a difficult,  
19 impossible portfolio.

20           The difference between you and me is not the job  
21 that you do, but it's our view of the portfolio that you  
22 have. I don't think I have heard, since I've been on the  
23 Board, any severe criticism of an LEA as far as the LEA's  
24 integrity, competence, attention to detail. There have  
25 been disagreements as to the end result of a decision,

1 but the problem is that, the portfolio that you have,  
2 from my view, and I would tend to say from the view of  
3 the audit.

4 And I guess I have to keep saying it over and  
5 over again because every time I hear a new speaker I am  
6 going to hear somebody feel that they're being challenged  
7 as far as their integrity is concerned.

8 I say nothing of you that I wouldn't say of  
9 myself if I were the LEA in the same position. In fact,  
10 I have said that I would feel, maybe because I have a  
11 legal training and not a training in environmental  
12 health, but I would feel my primary obligation would be  
13 to the entity, assuming that I'm dealing with the law as  
14 fairly as I can, would be to the entity that appointed me  
15 to whom I have my first fiduciary obligation and trust.  
16 Because they represent the public in all its spheres.  
17 Now you may not feel that way --

18 MR. MANASYAN: But they don't always.

19 BOARD MEMBER ROBERTI: -- but that's how I, as a  
20 trained lawyer, would feel if I were in your position.  
21 And I don't think I --

22 MR. MANASYAN: But you know, Senator Roberti,  
23 they don't. They are well meaning, but they don't always  
24 have the best public interests. I mean they may think  
25 so, but they haven't taken into consideration the public

1 health and environmental aspect of that equation.  
2 They're looking at maybe money or funding, "How are we  
3 going to pay for this? How are we going to clean up this  
4 site?" And whereas we're looking at, well you've got  
5 those public health concerns, and they're not focused to  
6 look on that where we are. We're trained. I mean I've  
7 got my Masters in Environmental Health as many of my  
8 colleagues do, I mean this is our profession, this is  
9 what our focus is. Our focus is not on saving our  
10 jurisdiction money but on protecting public health.

11           So I think you can divide out those  
12 responsibilities, and I leave those responsibilities of  
13 financing up to my counterparts who are the operator and  
14 let them worry about how they're going to pay for it.

15           BOARD CHAIR MOULTON-PATTERSON: Thank you.

16           MR. MANASYAN: Thank you very much.

17           BOARD MEMBER PAPARIAN: Can I make a comment?

18 This has been an instructive dialogue but I wanted to add  
19 something. Some of our concerns, some of my concerns  
20 about the LEA situation should not be interpreted as a  
21 blanket indictment of the LEA structure or a blanket  
22 indictment of LEAs. The vast majority of LEAs, probably  
23 almost all of them, are doing just an outstanding job.

24           But let me just give you, as a Board member  
25 there's a process in state law to decertify me as a Board



1 member. I can be removed for various causes from this  
2 Board, and there's processes laid out in state law to do  
3 that. Despite that, there are rules, there are  
4 regulations and laws to help me to avoid an appearance of  
5 a conflict of interest.

6           It was sort funny to me at one point earlier  
7 this year but I now understand why it was the case, where  
8 I couldn't vote on some RAP awards because of stock  
9 ownership. And it was stock that I did not own and it  
10 was stock that I did not control, yet it fell within the  
11 definitions enough that I had to excuse myself from  
12 voting on certain RAP awards, these are little  
13 certificates that are over a thousand companies got for  
14 doing good work on recycling and so forth.

15           Well that provision of law helps me to avoid any  
16 appearance of even a conflict of interest. And I think  
17 what some of us are saying up here is that there is an  
18 appearance of a conflict in some situations which is, for  
19 which there is some circumstantial evidence that there  
20 may be some real conflict of interest there.

21           We want to help avoid there being even an  
22 appearance of a conflict of interest, but do so in a way  
23 that protects the integrity of the LEA process and  
24 protects the interests of the environment which we're  
25 entrusted to assure the protection of.

1           MR. MANASYAN: I can certainly appreciate that.

2   And I think it should be something that should require  
3   more attention when it comes to looking at your process  
4   for evaluating LEAs and certifying them that clearly  
5   address factors to help local jurisdictions too to deal  
6   with this.

7           Because, as you mentioned, Senator Roberti, it's  
8   an ongoing thing. We always, we have these different  
9   pressures working on us, and local jurisdictions who are  
10   Local Enforcement Agencies, and this isn't just with LEAs  
11   too, I mean, as I think Justin mentioned, we regulate all  
12   other, all other kinds of, I mean within the realm of  
13   environmental health we regulate other aspects of our own  
14   government in the similar manner, whether it's hazardous  
15   materials, underground storage tanks or the like.

16           But this type of guidance I think would be  
17   helpful in both the certification and evaluation process,  
18   set up, setting up guidelines so that we have a standard  
19   to go by, and that we can also use this to explain to our  
20   counterparts that we need to regulate, back at our local  
21   jurisdictions, so they understand our needs to maintain  
22   the separation, at the city we call it a fire wall  
23   between us and the operator that we, I mean I don't even  
24   e-mail, we don't even, there's just certain things that  
25   we do, we go almost overboard not to have that perception

1 of conflict of interest.

2 BOARD MEMBER PAPARIAN: And again, I think that  
3 there are perhaps some things we can do to help --

4 MR. MANASYAN: I agree.

5 BOARD MEMBER PAPARIAN: -- provide the assurance  
6 and avoidance of appearance of conflict of interest.

7 MR. MANASYAN: I agree.

8 BOARD MEMBER PAPARIAN: You know, short of going  
9 through our full decertification process.

10 MR. MANASYAN: Thank you for putting up with my  
11 passion.

12 BOARD CHAIR MOULTON-PATTERSON: Thank you.  
13 Thank you.

14 Kelly Smith.

15 MR. SMITH: I represent the North Valley  
16 Coalition which is opposed to the expansion of Sunshine  
17 Canyon, and I've also represented the Alternatives to  
18 Kiefer Landfill and proponents of landfill expansion down  
19 in Santa Barbara. And it's not reflecting any position  
20 they've taken necessarily on any of the recommendations  
21 or anything, but just to offer some perspective and  
22 anecdotes and so forth to the discussion.

23 First of all though, all the folks that I've  
24 talked to anyway think this is a great report; that the,  
25 that the auditors zeroed in very quickly, amazingly, from

1 scratch on issues that are key to your mission here.

2           And whether or not you as a Board can reconcile  
3 your mission to reduce the need for landfills and police  
4 and patrol landfills that are operating; and they did so,  
5 the auditors I think, on the basis of some facts that I  
6 haven't found contested here today at all.

7           They were fairly straightforward quantitative  
8 numbers that they came up with for the amount of waste  
9 out there; for the violations that have gone on; for the  
10 times; the periods of time that violations have been  
11 allowed to continue; all these things are fairly  
12 uncontested.

13           The recommendations that they've made have  
14 touched some nerves obviously. But there are excellent  
15 starting points, I think, for the reforms that are needed  
16 on the basis of the title of this report, the limited  
17 oversight, the inability of this Board, as it stands at  
18 this point, to effect its mission.

19           And I think that this, that the title of this  
20 document was very well stated and summarized. So we're  
21 very much in support of that, the results it.

22           As far as the recommendations, this is turning  
23 into a marathon, I had just a couple that I wanted to  
24 focus in here on. I appreciate all the time that the  
25 Board has taken, obviously reflecting its, the import

1 that it has to the Board, this report. But a couple of  
2 things.

3 First of all, I find it really interesting that  
4 this, this conflict interest question has consumed so  
5 much of the discussion today because I didn't find it a  
6 big, a big element of the report itself.

7 As a matter of fact, I thought it was rather  
8 glossed over, but I was very happy to find it in the  
9 report because it's very true. As someone who's worked  
10 both sides of permitting, I'll give you some anecdotes  
11 from the most immediate county here in my experience with  
12 the LEA.

13 A county counsel represents the LEA; county  
14 counsel represents the Board of Supervisors here; always  
15 has, they claimed that they were going to get separate  
16 funding for outside counsel when needed, I've never seen  
17 it, that was back when they had their permit revision in  
18 1995.

19 The LEA regularly has to go before the Board of  
20 Supervisors as does the Department of Environmental  
21 Management and grovel for its annual funding for its  
22 budget. It has to review the tipping fees that come in  
23 as a component of doing that.

24 I have heard repeatedly that this permit will  
25 get through the LEA because the powers that be at the

1 county level want it. This is commonplace. It's a  
2 fact. It always has been, and it's probably been worse  
3 in years past.

4           When the LEAs as restaurant inspectors didn't  
5 have a clue about landfills, it probably reached its  
6 height at the time when solid waste facilities were more  
7 than just landfills, they were also transfer facilities  
8 and the other permutations of solid waste facilities that  
9 we deal with now. That took quite a bit of coming up to  
10 speed. And it also was a result of increased scrutiny  
11 and pressure, in no small part by the Board and its  
12 staff.

13           So you've seen improvements in the LEA. I've  
14 seen it definitely. They are, they are more responsible  
15 about their jobs, they're better trained, all these kind  
16 of things, and they've always been, I'm sure, very well  
17 intentioned as far as doing their job.

18           I want to just anecdotally reference the Santa  
19 Barbara permit that we opposed and you as a Board  
20 approved. In the course of reviewing that pretty  
21 carefully myself, working with staff and reviewing the  
22 work of the LEA in Santa Barbara, it was a good job. It  
23 was done very well. You could tell that the staff, that  
24 staff had worked with the LEA to get information early  
25 on. And, you know, they'd given them the time and so

1   forth so that the product before you was a good one.

2               Now constructively what I'd like to suggest,  
3   however, is that the job of enforcement can be different  
4   from that of permitting. The health inspectors perhaps  
5   are well trained to take care of inspecting landfills and  
6   so forth.

7               I still have serious questions about their  
8   abilities to handle the permitting of a major facility  
9   when it comes in, comes before them, when they're dumped  
10  with a joint technical document, you know, huge, that is  
11  under intense pressure to approve. Any large solid waste  
12  facility is a multi, multi, multimillion dollar, you  
13  know, facility. And if it's a public jurisdiction that  
14  wants its approval, those other conflict of interest  
15  perceptions can be especially intense.

16              I also think that it may be a job that is  
17  overwhelming as far as their technical ability. I don't  
18  know that they necessarily know waste. And I certainly  
19  think it's beyond their scope when it comes to the policy  
20  questions that go into these permits, that is questions  
21  such as the inter-jurisdictional impacts of a facility,  
22  the impacts interjurisdictionally on the, on the siting  
23  elements, the Integrated Waste Management plans, the  
24  other documents that form the basis of the state's police  
25  function and control over landfills, which is a state

1 function delegated to the cities.

2           It is not a city function, and I think that a  
3 lot these people are really yearning for the good old  
4 days when everybody had a dump in their backyard.

5           And I know that this Board is astute enough, and  
6 I have to believe that most the people in the audience  
7 are also, to know that waste is hauled long distances to  
8 other jurisdictions, and that has created a lot of  
9 questions that have to be addressed.

10           And on that I'd like to turn to the over  
11 capacity question, because obviously it's an important  
12 one. If we could separate the permitting function, this  
13 Board perhaps could deal with the questions of capacity.  
14 And I found one of the responses by this Board to the  
15 audit that's very constructive and part of the discussion  
16 today that's come up from several speakers is the, is the  
17 need to go beyond just the fact that we have an  
18 overcapacity statewide to identifying regionally or in a  
19 waste shed anyway what kind of capacity questions are  
20 implicated, and how they affect statewide planning and  
21 policy. And that might be a good starting point when it  
22 comes to that.

23           I do want to point back to, Rick Best was  
24 telling me that, I guess it was in the mid-nineties that  
25 the Department of Finance had issued a report that indeed



1 said the same thing about separating the permitting and  
2 enforcement functions between the state and the local  
3 agencies. And that might be a, be something to think  
4 about and evaluate as a tool for the state managing that,  
5 that role. And maybe we can do that without legislation  
6 by the LEA bringing to the Board sooner than later a  
7 review of permits when they're submitted. That might be  
8 a step for doing that.

9 Thank you.

10 BOARD CHAIR MOULTON-PATTERSON: Thank you very  
11 much. And I want to thank all the speakers for speaking  
12 today. We really appreciate your input.

13 That concludes our speakers, and I can open it  
14 up to questions and comments. I did have one question  
15 myself.

16 How many, I'm a relatively new Board member,  
17 less than two years, how many decertifications of LEAs  
18 have we done?

19 MR. MANASYAN: I'll defer to Kathryn. I,  
20 personally I can't recall any.

21 BOARD MEMBER JONES: Inyo County.

22 MR. MANASYAN: I think we got very, very close  
23 to decertifying them.

24 CHIEF COUNSEL TOBIAS: We Decertified San Luis  
25 Obispo on CEQA grounds briefly so that we could do the --

1           MR. DE BIE: But I thought the city actually  
2 decertified or de-designated that particular entity and  
3 then we stepped in and said we --

4           CHIEF COUNSEL TOBIAS: I just know that we  
5 acted.

6           MR. DE BIE: I don't think we ever actually  
7 de-certified. We got very close, and I think it was Inyo  
8 that we got the closest to.

9           BOARD MEMBER JONES: We did a partial  
10 decertification in Inyo county.

11          MR. DE BIE: Okay.

12          BOARD MEMBER JONES: We allowed them to keep  
13 certain parts of their function, and then Board staff  
14 took over other parts, and it was a direct action of this  
15 Board.

16          MR. DE BIE: Yes. That's true.

17          BOARD CHAIR MOULTON-PATTERSON: Thank you.

18          MS. NAUMAN: Madam Chair, I'll try to address  
19 this decision. Let me just indicate to Board members  
20 that we are working on it, and I am planning to bring  
21 forward in February an informational discussion item for  
22 you that will review the LEA certification and evaluation  
23 process. I know there have been a lot questions about  
24 this over the last several months, and our evaluation  
25 staff is working on that item for February.

1           BOARD CHAIR MOULTON-PATTERSON: Thank you, I  
2 appreciate it.

3           Senator Roberti.

4           BOARD MEMBER ROBERTI: Just on the point, maybe  
5 a little bit with what Ms. Nauman was referring to. I  
6 would hope that our evaluations would deal with a  
7 methodology of tightening the conflict rules, and at the  
8 same time preserving the maximum amount of local control  
9 in these decisions.

10           I don't think -- and we have a good staff to aid  
11 us in this area. What some of the speakers have  
12 addressed, and that is the need for local control in  
13 these areas is obviously a very important consideration.  
14 But at the same time, regional decisions, regional  
15 capacity questions, and conflict of interest questions,  
16 to eventually make the decision that the LEA finally  
17 comes up with more palatable are also very important. I  
18 think that part of the equation has been ignored to some  
19 extent.

20           And in a larger sense, Madam Chair, I suspect if  
21 we had more neighborhood preservationists here than, I  
22 call them stakeholders, maybe I'm misusing the word, then  
23 this Board would be, then some of the centers, the  
24 critique or the object on this Board would be considered  
25 as being too favorable toward local government, industry,

1 or whatever.

2 Because I want to help clear up the  
3 misconception, especially as someone who has been here  
4 for this meeting or a prior meeting for myself, as I  
5 indicated earlier, I have voted for more landfills,  
6 bigger landfills, because it is what I view as a  
7 unfortunate necessary evil, maybe evil is too strong, of  
8 waste management.

9 And I for one am not opposed to landfills. I  
10 wish we didn't have one, but we've got to have them.

11 But the record of this Board, for a lot of  
12 reasons, sometimes incorrect perception as well, has been  
13 that we have not denied one permit ever. In my mind that  
14 speaks volumes.

15 That doesn't mean I want to deny all permits,  
16 but it indicates a tilt that is gonna fall over before  
17 the Leaning Tower of Pisa does.

18 So I hope you come back with a report that  
19 understands the need for local control, but also  
20 understands the need for a reduction in the conflict, and  
21 for some regional considerations to be considered as  
22 well.

23 BOARD CHAIR MOULTON-PATTERSON: Thank you.

24 BOARD MEMBER JONES: Madam Chair.

25 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

1           BOARD MEMBER JONES: I think that this has been  
2 a good dialogue today. I'm going to respond to just a  
3 couple of things that were said. I don't, I think that,  
4 I think that past legislators should take pride in the  
5 rule, in the statutes and the laws that they did put into  
6 place, because CEQA is a good example.

7           Mr. Medina and I were talking to somebody from  
8 Virginia the other day, in Monterey, that had eight mega  
9 landfills located in their state that had more capacity  
10 than that state could ever generate, ever. And those  
11 landfills were permitted by the Governor of that state.  
12 They didn't have an Integrated Waste Management Board.  
13 They didn't have the kind of systems that are in place in  
14 California. So now we've got a controversy about where  
15 New York's garbage is going and where other things are.  
16 But that's the difference.

17           And legislators and Governors and stakeholders  
18 and citizens were served and have served because they had  
19 enough foresight to think about CEQA; to know that when  
20 people are upset locally there is change; to know that  
21 things have to be noticed to ensure that people are  
22 notified about what is going on in their jurisdiction.  
23 And I think it was brilliant legislation. I think it's  
24 abused sometimes, but I think it was brilliant because it  
25 let local citizens know what was going on.

1           And this Board is a recipient of those good  
2 actions. Because at the local level, things are planned,  
3 things are developed, and they go through a process that  
4 the legislature had the foresight to make sure would  
5 happen.

6           The, I think one of the reasons, and I do take  
7 exception that this Board has been beaten down by  
8 stakeholders, because as the industry, my industry is not  
9 very happy with me sometimes because they may have a  
10 permit or they may have something that isn't right, and  
11 it never gets here. Or if it gets here, then I'm the  
12 biggest opponent to it.

13           But I think one of the reasons that we don't see  
14 a lot of citizens here every day at every one of our  
15 Board meetings, because believe me, we have seen 'em, we  
16 sat here one night -- I'm not sure of anybody other than  
17 Mr. Eaton and maybe the Senator, I don't know if you were  
18 here, we stayed here until 9:00 o'clock at night and got  
19 berated for probably three hours over the science of  
20 burning tires and cement kilns and how we were going to  
21 do a disservice to the world.

22           And I thought, but the system worked because  
23 people had the opportunity to come forward to this  
24 Board. I think one of the reasons that there are not a  
25 lot of citizens beating down our doors and why we have a

1 43 percent diversion rate in the State of California, and  
2 why in 1999 only a hundred thousand more tons went into  
3 the landfill than the year before, and this year only  
4 600,000 more tons went in the landfill than the year  
5 before, than in '99, is because people are part of the  
6 system and they approve of the system.

7           And if they didn't approve of the system they'd  
8 be knocking our doors down, because they've never  
9 hesitated before. They didn't hesitate on Kofer. They  
10 didn't hesitate on Leona Dykis. They didn't hesitate on  
11 Kiefer Road. And I think that that is systematic of the  
12 fact that parts of the system worked.

13           We talked yesterday about global warming and  
14 landfills being the source of, the methane from landfills  
15 being the source of this thing, of this, of this, of  
16 global warming issues and the ozone being depleted. But  
17 that's a global issue.

18           And I think the standards in the United States,  
19 and especially the standards in the State of California  
20 for the operation of landfills is not the same standard  
21 as in France; it's not the same standard as in Germany or  
22 in Africa or in Asia or anywhere else in the world that  
23 covers garbage every day, that has systems where there  
24 isn't raw sewage running down the middle of the streets.

25           That we have managed these things in a way, and

1 I'm not saying perfect, I'm not saying they don't need to  
2 be tweaked, but it amazes me that we've heard three  
3 witnesses today say that their work locally with  
4 operators is why there is never a permit that has come in  
5 front of this Board to be denied, because they've done  
6 their job. And they've gotten it to a position where it  
7 could be approved after it's gone through all of the  
8 local permitting processes.

9           And I don't blame any of the LEAs or the  
10 operators or citizens for being offended with the audit  
11 that says that the State of California somehow is, their  
12 health and safety is at peril because of our lack of  
13 oversight. Because it isn't. The facts don't bear it  
14 out.

15           And I think it was a point of view that we can  
16 all look at, but it sure won't be, it, the fact that we  
17 never gave a fine out is like what happened in San  
18 Francisco at SWT's, at the solid waste transfer facility  
19 in San Francisco that moves all the garbage. They had  
20 not received a fine for six years, they had not received  
21 a penalty or an airing violation for six years, so  
22 somebody from the State Board came in, did an inspection,  
23 found some dust in the corner, and wrote us up because  
24 they knew a facility could not operate in compliance for  
25 six years that was that big.



1           Yet that's what we demand of operators is that  
2   you operate effectively and efficiently. So I don't  
3   think we judge our success by the number of fines, I  
4   think we judge our success by the lack of fines.

5           And I think we have a lot of work to do on how  
6   notice and orders get transmitted, and how our LEA  
7   inspections; state inspections maybe go to a shorter  
8   period of time; how we work on the evaluations. I think  
9   that all of the evaluation criteria ought to get  
10   delivered, to me anyway, I want to review it and look at  
11   it so that I can remember what it was we put in place,  
12   and then let's see how we do, how we make people  
13   comfortable with the system that works.

14           BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.  
15   Jones.

16           I would just like to say that I certainly  
17   believe in local control, coming from local government.  
18   I certainly have sat through many, many hours of public  
19   testimony, and at Huntington Beach, practically every  
20   meeting we had two and three hours of public comments.  
21   So I know that the, at the local level they do go through  
22   hearings and so forth.

23           But I am a little offended that people, it, I  
24   guess there has to be a balance, I believe in local  
25   control but I also think that it's right for us to be

1 able to question something and bring it up. And I feel a  
2 defensiveness sometimes if anything is even questioned, a  
3 decision that's been made at the local level.

4 And you know, quite frankly, maybe the reason we  
5 don't have a lot of citizens up here, we meet in  
6 Sacramento, it's difficult to get up here. So I think,  
7 you know, we all should step back sometime and not feel  
8 that we are criticizing the Board or criticizing local  
9 government just because we might question it.

10 Any other comments, questions before we talk  
11 about where we're going from here.

12 Mr. Medina?

13 MR. MEDINA: Yes. Having attended the SWANA  
14 conventions with Mr. Jones, I was on a panel with a  
15 gentleman from England who represents the solid waste  
16 industry in England. He was relating to us how in the  
17 European common union they have a zero landfill policy.  
18 And, of course, the reason is that they had little  
19 landfill capacity available. They do, however, use  
20 incineration to a great deal of the solid waste, that is  
21 for them a very plausible solution.

22 Having sat on the San Francisco Board of  
23 Supervisors when they tried to site an incinerator to  
24 burn solid waste at Hunter's Point, for example, it did  
25 not happen. And that's just because any issue that has

1 to do with solid waste in the city the citizens take a  
2 strong interest in. There's a history both on the side  
3 of industry and the side of the public as well. And so  
4 our, our hearings were also quite lengthy in that  
5 respect.

6 And in regard to the function of the LEAs, I  
7 know that LEA's responsibilities and duties vary from the  
8 large jurisdictions; for example, you may have a person  
9 in L.A. County that that might be that person's full-time  
10 job, and so that's all they do. But for someone on a  
11 very small rural county, they may have other functions to  
12 carry out as well as their LEA duties.

13 I do think that, again, I have no problems with  
14 the Auditor's reports and their findings and don't have  
15 to agree with them. There is an opportunity to review  
16 that and to take a look at this Board periodically and  
17 make the necessary adjustments that we need to make.

18 And finally, I meant no disrespect to Senator  
19 Montoya, he's provided valuable advice and does a good  
20 job for his clients, and he's welcome to contact me, as  
21 he knows, at any time.

22 BOARD CHAIR MOULTON-PATTERSON: Thank you. Any  
23 other comments? Questions? Okay. Where do we go from  
24 here?

25 Any suggestions from Board members first and

1 then from our staff?

2 BOARD MEMBER EATON: Well Madam Chair, I think  
3 I'll start off the discussion. First off, I didn't see  
4 any comments, because I think all that's been said today  
5 has been said, and that's the first time that anyone has  
6 listened to each other in a long, long time, so from that  
7 standpoint I think it probably says it most.

8 What I would like to see happen, I just was  
9 asked for the calendar, what I look at is I think, first  
10 and foremost, if it would be okay with the rest of the  
11 Board members, that we authorize you to seek the letter  
12 of authorization getting the extension to March 1st. I  
13 think that is first and foremost as I go back through my  
14 notes and so on and so forth.

15 BOARD CHAIR MOULTON-PATTERSON: I certainly  
16 will.

17 BOARD MEMBER EATON: And that somehow we get a  
18 response quickly. My understanding is that, generally  
19 our Board briefing is the Wednesday before the Board  
20 meeting.

21 BOARD CHAIR MOULTON-PATTERSON: Right.

22 BOARD MEMBER EATON: I would just caution you in  
23 that, that that falls on Valentine's Day, the 14th, so  
24 for some that may cause a conflict.

25 BOARD CHAIR MOULTON-PATTERSON: Gee, do we have

1 any romantics here?

2 BOARD MEMBER EATON: Some of us are closet  
3 romantics and so on and so forth. But I was thinking in  
4 terms of, depending on what day you were thinking of  
5 having the review, either the 13th or the 14th, that  
6 maybe on that day we couple half the day as briefing and  
7 half a day for Board actual discussion of some of the  
8 comments or information that other Board members who  
9 speak after me find would be informative or to get back  
10 to.

11 But what I'd like to suggest, more importantly,  
12 is that by February 7th, and that is about fourteen days  
13 from now, so I just leave that out there, it's a noticing  
14 requirement, that somehow we get, based upon all the  
15 Board members who come after me and the information they  
16 would like to see happen, a packet go to the Board  
17 member's offices so that they have at least four or five  
18 days to look at some of the things that either the staff  
19 recommends or don't recommend, so that we can have that  
20 discussion on the 13th or 14th for those romantics or  
21 what have you.

22 And I just throw that out as the timeline, a  
23 timeframe, because I think other members will probably  
24 want additional information.

25 One of the things, for instance, that I'd like

1 to see is basically other conflicts between various parts  
2 of the law. I mean how does the interplay, and I just  
3 mentioned this earlier, but the fifteen year capacity  
4 versus the landfill capacity. Not necessarily for  
5 analysis from staff, but are there statutes that conflict  
6 that we can kind of sort out, you know, those kinds of  
7 things.

8           So I was just trying to lay out the timeline. I  
9 may have some things that I want, but I'll let other  
10 Board members go, and I'll throw it out as a timeline.  
11 And that gets us to a period where we can actually have  
12 the time then to discuss, to actually see material, and  
13 to have another opportunity to discuss that material and  
14 hash it out.

15           I don't know, we probably have to notice if  
16 we're going to do deliberations that day on any part of  
17 the report that afternoon or that morning. I recommend  
18 that we do deliberations in the morning, that forces us  
19 to kind of have that discussion, and then we'd have our  
20 Board meeting, and if we needed to do any final tweaking.

21           I just sort of throw that out and see what other  
22 Board members think of the timeline, if we have the  
23 extension, of course.

24           BOARD CHAIR MOULTON-PATTERSON: Yeah. And I  
25 certainly will, with the permission of the Board, write

1 that request. We were turned down one other time, but  
2 hopefully we won't be, and we will certainly get that  
3 right in and ask for an extension to March 1st.

4 BOARD MEMBER EATON: And I would be happy to  
5 sign the letter with you. I don't think it means anymore  
6 or adds anymore weight, but it could add a little more  
7 ink.

8 BOARD CHAIR MOULTON-PATTERSON: Sure, we can all  
9 sign it.

10 Mr. Jones.

11 BOARD MEMBER JONES: I'd agree with that, that  
12 makes sense.

13 BOARD CHAIR MOULTON-PATTERSON: Board members as  
14 far as the timeline to come back and discuss.

15 Mr. Paparian.

16 BOARD MEMBER PAPARIAN: Yeah, I think that's  
17 good. I really would like to see us respond to all the  
18 points, all the sixteen points in the report. Come up  
19 with some mechanisms to follow-up over the coming months  
20 some of the items that have come up, and there will be  
21 further discussion and action.

22 BOARD CHAIR MOULTON-PATTERSON: Thank you. And  
23 I certainly think the audience can see that we take this  
24 very seriously and we might have differences of opinion,  
25 but we come from varied backgrounds, and I think that's

1 what makes this Board a really good Board, and we're  
2 really looking at this report very seriously and want to  
3 give it its due.

4 So, do you need any more direction as far as --

5 MS. NAUMAN: Just let me kind of reiterate the  
6 direction that I heard so we're all clear. I heard a  
7 couple requests for information from Mr. Jones, the  
8 criteria for evaluation; from Mr. Eaton some review of  
9 possible conflicts of various statutes or regulations. I  
10 didn't hear any other specifics for information, but that  
11 you want some time of a package available to Board member  
12 offices by the 7th, and I would suspect that you probably  
13 would want in there our thinking on perhaps a schedule to  
14 approach the discussion and deliberation on these issues,  
15 and any other further thoughts that the staff may have  
16 for your consideration. And we'll put that in the  
17 package to be delivered by February 7th.

18 We'll then be discussing further steps.  
19 Sometime during the day of the February 14th briefing  
20 staff will take directions at that time and prepare  
21 something for your consideration then at the February  
22 Board meeting which will be your final direction prior to  
23 March 1st.

24 BOARD MEMBER EATON: This isn't really direction  
25 but perhaps it's a suggestion. And I'm going to see as



1 well a suggestion that perhaps, I don't know what proper  
2 protocol happens to be, but I sure would like for us,  
3 because this would be new, I believe, for our staff,  
4 they've never had the State Auditor have a report or have  
5 they that I can -- at least not during my time, so to sit  
6 down with them and actually get a better feel for what is  
7 it they're really looking for in this first initial sixty  
8 day document, or maybe get copies of what other agencies  
9 have done.

10 I would like to look at a copy of what another  
11 agency has done, because I think we have an opportunity  
12 here to make an impact that we are one, responsive; and  
13 two, that we do have at least some idea based upon the  
14 testimony of the individuals who showed up today, those  
15 who are may be silent for whatever reasons as well, to be  
16 able to put a document in the timeline together with the  
17 options.

18 Some of the options that we may have available  
19 to us may not be available to us this year because of,  
20 you know, legislative approval or not. But I'm just  
21 saying that that may be helpful.

22 I don't know if their protocol allows them to do  
23 that with you as staff, but I think it would behoove you  
24 to at least make the phone call or a suggestion and find  
25 out what is it that you're looking for.

1           Not to try and put, you know, the same kind of  
2 report together, but I mean today was sort of, well we're  
3 just looking at kind of what you're going to do. Well,  
4 you know, what if it is that, you know, you don't  
5 necessarily think that that's appropriate, or that we  
6 don't think it's appropriate at this time given X  
7 reasons, or we do think it's appropriate but we need time  
8 to do X, those are the options.

9           MS. NAUMAN: We'll have some discussions with  
10 them.

11           BOARD CHAIR MOULTON-PATTERSON: That's a good  
12 suggestion to see some others also.

13           BOARD MEMBER MEDINA: Madam Chair, just from my  
14 experience at Caltrans where I had a lot of experience  
15 with Auditor's reports.

16           BOARD MEMBER EATON: Is this true confessions  
17 day or not?

18           BOARD MEMBER MEDINA: And not the whole  
19 department but the project, the Century freeway, or  
20 whatever the current name happens to be, what they  
21 required most all was a timely response. So even on the  
22 draft report we had a timely response to the draft  
23 report.

24           Now the first occasion that I had one of these  
25 was the Century freeway, that was the example, and staff

1 were actually reluctant to do a report, to do a response.  
2 They didn't know how to defend it, so I went to my legal  
3 department and I said, you know, you guys are trained to  
4 do timely defenses, and we were able to get our responses  
5 using all of our staff, of course.

6 But what they really wanted was a timely  
7 response, and that's one of the concerns here is that we  
8 do a timely response, and we don't have an over long  
9 process for developing a response.

10 There's been a lot of input here from the  
11 speakers, from the Board members, from staff; I think we  
12 have adequate materials to be able to do an adequate  
13 response.

14 I'm not opposed to asking for an extension, but  
15 from my perspective, having undergone several audits, was  
16 to do a response as quickly as possible and, because if  
17 you don't do a timely response then the legislature gets  
18 involved.

19 BOARD CHAIR MOULTON-PATTERSON: Okay. We will  
20 ask for that very short extension and they certainly  
21 aren't shy about saying no, so we'll find out.

22 INTERIM EXECUTIVE DIRECTOR BRUCE: Madam Chair.  
23 If I just might suggest that if, in fact, we did get a  
24 response back, that we could be prepared -- I spoke  
25 briefly to Joanne who was here today. She suggested that

1 if we didn't get that extension, that we could provide  
2 just a summary of what this meeting was about, then  
3 showing how we are going to address this in a timely  
4 manner. So that we might be wanting to look at this in  
5 two ways; one obviously going if we get the extension;  
6 but if we don't then we would be prepared to provide that  
7 summary of today's meeting showing how we're going to  
8 move forward. So I think we should attack it two ways.

9 BOARD CHAIR MOULTON-PATTERSON: Two-pronged.

10 Thank you. And our court reporter needs a break so we'll  
11 take ten minutes right now.

12 Thank you very much.

13 (Thereupon there was a brief recess.)

14 BOARD CHAIR MOULTON-PATTERSON: I'd like to  
15 call the meeting back to order, please. Ms. Nauman --  
16 well, first we better do ex parte.

17 Excuse me, Mr. Eaton ex parte.

18 BOARD MEMBER EATON: I had a meet and greet with  
19 Mark Aprea and a quick hello to Denise Delmatier.

20 BOARD CHAIR MOULTON-PATTERSON: Okay. Mr.  
21 Jones.

22 BOARD MEMBER JONES: Mr. Manasyan and Mark  
23 Aprea, Denise Delmatier, Kent Stoddard, they were all  
24 standing together and I said hi.

25 BOARD CHAIR MOULTON-PATTERSON: Mr. Medina.

1               BOARD MEMBER MEDINA: I did speak with Joe  
2 Montoya during the break.

3               (LAUGHTER.)

4               BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

5               BOARD MEMBER PAPARIAN: I also spoke with Joe  
6 Montoya.

7               BOARD MEMBER ROBERTI: I spoke with Joe Montoya  
8 as well.

9               BOARD CHAIR MOULTON-PATTERSON: And I answered  
10 a procedural question for Denise Delmatier.

11              Ms. Bruce, did you have an announcement?

12              INTERIM EXECUTIVE DIRECTOR BRUCE: Just briefly  
13 that we have received a call that they have asked all  
14 people to leave the Cal EPA building by 5:30 today for a  
15 safety check, so it's important that if anybody needed to  
16 go back you're going to be out of there completely by  
17 5:30. That's elevators, that's everything.

18              Thank you.

19              (Thereupon occurred simultaneous discussion.)

20              BOARD CHAIR MOULTON-PATTERSON: Okay. Ms.  
21 Nauman, how would you like to proceed?

22              MS. NAUMAN: With the indulgence of the Board,  
23 we'll proceed to item 21, then go back and do 20, 22, and  
24 then we'll finish up this segment by revisiting item  
25 number four based on your action last night.

1           So item 21 is consideration of suspension,  
2   revocation, or modification of the Board's long term  
3   violation policy.

4           The Board will recall that you directed staff a  
5   month or so ago to bring this item forward as one of the  
6   several items on our list of policies, procedures,  
7   etcetera, now that the Board wishes to reexamine.

8           What we have done in this item is described the  
9   current procedure, and have also included some historical  
10   data which lists the permits that the Board has concurred  
11   in since the adoption of the procedure, which you'll note  
12   focus on long term gas violations.

13          Mr. Jones had requested that we try to make  
14   arrangements to get an expert to come in and talk with  
15   the Board about landfill gases, and we're very pleased  
16   today to have Mr. John Pacey, who is a recognized expert  
17   in landfill gas, with us. And he's going to provide  
18   about a ten minute or so overview of landfill gas.

19          He's indicated to us that he welcomes comments  
20   and questions and will not be bothered at all if you  
21   interrupt him during his presentation to pursue those  
22   questions or comments.

23          So with that, I'll turn it over to Mr. Pacey,  
24   and then staff will present the rest of the item after  
25   that.

1               BOARD CHAIR MOULTON-PATTERSON: Thank you.

2               MR. PACEY: Thank you, Madam Chair and members  
3 of the distinguished panel, Board.

4               BOARD CHAIR MOULTON-PATTERSON: Thank you for  
5 being here, Mr. Pacey.

6               I've been asked to give a short discussion to  
7 simplify your thoughts on landfill gas. I understand  
8 you've been having a few discussions on it lately, and  
9 I've been in this business for some thirty years, had  
10 national, international experience, and I wanted to share  
11 some those thoughts with you to try to simplify some of  
12 the ways you might look at it.

13              And when I say simplify, it's going to start off  
14 with just a few things on where do we get our gas. And  
15 so this little diagram here will show you gas comes from  
16 three components, food, vegetation, and green waste and  
17 paper.

18              The food is a very small component, about nine  
19 percent by total weight.

20              The green waste is 19 percent.

21              And paper waste is 33.

22              So we have 61 percent of our MSW is what  
23 produces the majority of our landfill gas.

24              You see below there there's another seven  
25 percent of wood product. That wood product gives us gas,

1 but it's spread over so many decades that it really is  
2 mostly insignificant over time.

3           And then below that we have other organics which  
4 you might think would give off some gas and the don't,  
5 that's why we call them refractory, that's the plastic,  
6 the rubber, and the textiles.

7           So in simple terms our landfill gas comes from  
8 three sources, the majority it. Things that don't come  
9 from these particular products are those small quantity  
10 hazardous wastes and other chemicals that might give off  
11 a little bit of trace gas. But our main problems as we  
12 relate to greenhouse gas is coming from these three  
13 products.

14           And when we talk about the gases that go  
15 off-site and cause migration, it's these gases. They  
16 carry trace gases. So it's a carrier for anything else  
17 that happens to be in a landfill at a given time.

18           We also note that the timeframe for the  
19 biodegradation of these products ranges from one to five  
20 years for the food waste. It goes pretty quick.

21           Paper waste and some of the green waste lasts a  
22 lot longer. Those are our long term products, and  
23 they'll run out there from five to eighty years.

24           Why the difference? Because if you have a dry  
25 landfill, it's not very conducive for the microorganisms



1 to break down or Degrade the waste product, and therefore  
2 it may not get fully degradable during the timeframe  
3 that it's there, in these timeframes I have here.

4           So at eighty years a piece of paper in a dry  
5 landfill will be still readable. At five years you may  
6 still see some food, some of the more resistant food  
7 products. But in the first year, if you have some highly  
8 wet material, these microorganisms need temperature, high  
9 temperature and a lot of moisture. So if you have those  
10 then these first timeframes are applicable.

11           So just a quick overview. That's the product  
12 that produces the gas, and that's about the timeframe  
13 it's produced.

14           And I'm going to show you now some other things.  
15 If you happen to be looking at the product, the potential  
16 of a gas generation energy project, then what we'd be  
17 looking at in terms of the yield that you might expect  
18 from each of these products, and this is only a matter of  
19 interest in very quick passing; you'll notice that food,  
20 vegetation, and paper, as far as the amount, cubic feet  
21 that we might get, we'll get .18 cubic feet in what we  
22 call a very wet landfill versus .09 cubic feet per pound,  
23 per dry pound of waste. And that's methane. That's  
24 landfill gas.

25           Okay. And if you look at the sum totals really

1 is what I want to point to today, you can get from a low  
2 of 1.05 to 2.03. Now that's the total yield of landfill  
3 gas, and quite frankly that's a mistake, it's methane.  
4 It says, well it says landfill gas on the top, down below  
5 you'll notice it says BQ per methane per dry pound.  
6 That's what it is.

7           So we can have that variation in the amount of  
8 gas that's produced if you're looking at an energy  
9 project. And that was just a point of interest.

10           Just a moment to explain what each of these  
11 microorganisms goes through in their decomposition or  
12 degradation process. They start off over here with a  
13 aerobic condition when they're first placed in the  
14 landfill. The hour after they're placed they're  
15 producing gas, they're producing almost total carbon  
16 dioxide.

17           And over a short period of time they lose that  
18 organic oxygen, if you will. And once they lose that  
19 they're no longer in the aerobic state, they're into a  
20 anaerobic state, no oxygen present.

21           And they proceed, if you look at the table  
22 that's under there, you'll notice that there's timeframes  
23 for phase one, two, three, four.

24           Notice that phase four, it runs from eight to  
25 forty years. That is the longest term we have for the

1 waste as it degrades. If it's a wet, if it's on the dry  
2 side. If it's the dry material it will be on the long  
3 term. So it's a decomposition phase these all go through  
4 and they produce different products at different stages.  
5 But most of the phase is methane production in stage  
6 four.

7           One of the charts that I like to show is, now is  
8 what happens to the, what does it look like when we have  
9 a gas curve that defines -- if you look at the various  
10 types of conditions we can have in a landfill as far as  
11 the degradation, we have down at the bottom the blue  
12 curve which is a dry landfill. And that does not produce  
13 a whole lot gas over the timeframe that the landfill is  
14 operating and following.

15           On the other hand, if we have that particular  
16 landfill and it has, and let's say it's a Subtitle D and  
17 it's a totally contained, environmentally secure  
18 landfill, if it has a membrane failure over time, let's  
19 say twenty years after the closure, that landfill now is  
20 getting water, will start towards that upper black curve;  
21 in other words, we'll get more gas generated, a new curve  
22 starting, if you will, or the start-up of the old curve.

23           So we have 'em just shut it off because we've  
24 caused a stable condition for a while. But we really  
25 still have an opportunity for some problems in the

1 future.

2           The reason I show these four curves is to  
3 indicate to you that if you're out here in the desert  
4 area you're going to have a blue curve. If you're a Yolo  
5 type landfill just across, fourteen miles away, you'll be  
6 near the purple curve, the second curve up as far as your  
7 gas generation curve.

8           If you're out in a Fresh Kills Landfill in the  
9 State of New York, one of the wettest landfills around,  
10 you'll be on the yellow curve approximately.

11           And if you do what we now call a bioreactor  
12 curve, which is what we're starting to talk about. I'm  
13 chairman of the Bioreactor Committee, both for SWANA, I  
14 heard someone is from SWANA here earlier today, and also  
15 for International Solid Waste Association. So I've been  
16 in the bioreactor studies and demonstrations since the  
17 first one over in Sonoma County in 1971.

18           So we've been looking at bioreactors for years,  
19 and we've never been able to do them until we got  
20 Subtitle D with the environmental control and  
21 containment.

22           Now we can do them. And what we can see, if we  
23 want energy projects, why wouldn't we try to get the most  
24 energy, stabilize the material as quick as we can? It's  
25 a wonderful opportunity, and you're doing a demonstration

1 project over in Yolo County.

2           At this point I think you were just approved,  
3 the EPA got the approval yesterday, or let's say they  
4 voted on it, they still have a few things to go through,  
5 but we'll see a demonstration starting over here thanks  
6 to the California Integrated Solid Waste Management  
7 Board's help over these years. Without them we couldn't  
8 have been where we are today.

9           So that's what we can do if we want to manage.  
10 Now that's going to give us an additional 30 percent  
11 capacity in our landfills. You're talking about are we  
12 going to lose capacity. If we go to the bioreactors and  
13 can successfully do those which will be demonstrated,  
14 you're going to have an opportunity, which you've been to  
15 a degree discussing in here, an increase.

16           And you'll think about that Yolo or that purple  
17 curve, that's where it is today, that's all the energy  
18 you could get out it. And it takes a lot longer and it's  
19 spread out over a longer period time.

20           I just want to take a quick few minutes to show  
21 you an example of a Yolo type of a landfill and the  
22 different stages in comparison with a bioreactor and a  
23 Yolo type landfill.

24           This is looking at the flow curve again, and  
25 that flow curve, which would be right here, versus this.

1 That shows that the curve lasts a lot longer, so it's not  
2 quite as much as a bioreactor, where things happen  
3 quickly, high magnitude and they drop off quickly.

4 If we looked at it from a standpoint of a energy  
5 project, which I want to show you, then we have a curve  
6 that looks like this. It's the same gas curve, but all  
7 the sudden I'm showing you some energy values here for a  
8 particular study that was made.

9 This energy shows you that with the yellow type  
10 curve you could have had a three megawatt project, but  
11 not the same magnitude as you do with the bioreactor type  
12 curve which gives you an eight megawatt project. A whole  
13 lot more opportunities for methane reduction by using  
14 offsetting fossil fuel. Not methane reduction, but it's  
15 fossil fuel offsets. And a very economic project here.

16 And so those are the kind of benefits you can  
17 get as you look at what management of your landfills in  
18 the future.

19 The capacity idea I just wanted to show you very  
20 quickly a settlement curve, projections on the different  
21 stages, the different types of landfills. This curve  
22 shows you settlement versus time and the waste thick  
23 settlement, or the waste settlement as a percent of the  
24 waste thickness.

25 So if you had a hundred foot deep landfill, you

1 would have settlements in the range of four, this one is  
2 the Yolo landfill, you would have in twenty, twenty-five  
3 to forty-five years, the way it is now, you would have  
4 about an average of fifteen percent settlement. But it  
5 takes many decades to get there.

6           If you do a bioreactor then you're down in this  
7 range, and in five to ten years you would have about  
8 twenty, let's say twenty to twenty-five percent  
9 settlement. That's increased capacity, and that's from  
10 the time you start your bioreactor process.

11           So those are what we're looking at in the  
12 future. I just wanted to show you a picture of what's a  
13 bioreactor and an aerobic bioreactor that's being done.  
14 This is in Tennessee, and it's a demonstration project.  
15 It shows you we have lots of wells. The big pipe here is  
16 an air injection pipe. The white pipes across here are  
17 air, excuse me, those are leachate or liquid injection,  
18 because we need high water and we need air injection for  
19 airways.

20           That's a very instrumental project, and that's  
21 happening as we speak.

22           Now, enough of the slides, I want to try to get  
23 through some impressions here. I just want you to think  
24 about this. We're in a room, let's say this is a  
25 landfill. And if it was a landfill you'd have to expand

1 it by an order of magnitude of perhaps a hundred to a  
2 thousand times, and it wouldn't be as high relatively  
3 speaking; it might be forty or fifty feet high, but it  
4 might be five hundred feet or three hundred feet on each  
5 side.

6 Now, if we're generating this landfill gas and  
7 microorganisms, this is not going to have an impact on  
8 anything other than the gas to get away, it has to go up.  
9 So it's emissions, or it's got to go down, and that would  
10 be migration, that's the two conditions that we use.

11 If it's a Subtitle D landfill, if I have these  
12 perimeter-enclosed, like with walls, in this case we use  
13 membranes, that gas doesn't get out. Gas is controlled.  
14 It's environmentally secure.

15 So if we have a Subtitle D landfill, 1993, 1993  
16 and after, we have control of our landfill gases. And we  
17 do that, it's mandated. And as we finally cap it, of  
18 course we're finished, we can get some losses during  
19 operation, but if we get too much we're mandated to  
20 control it.

21 At the closure we do have it under control. And  
22 it is a controllable system.

23 The real problems that you're dealing with I  
24 believe with your, with the landfill gas conditions  
25 you're discussing, are your pre-1993 landfills without



1 the requirement for membranes.

2           Now I have to say there were different  
3 timeframes where you got different kinds of membranes.  
4 I've been operating as an engineer on landfills since  
5 1968 here in California, and we helped set some the early  
6 standards.

7           Back in those days we decided initially you had  
8 to have some sort of a clay containment, even as early as  
9 1970 to 1973, about ten to the minus six centimeters per  
10 second for about a two foot thickness.

11           In the 1980s to '85 we began to really look at  
12 liner type of things and we really began to look at  
13 recompacted clay. Even if we had clay naturally  
14 occurring we said we had to go to recompact it because  
15 there was lenses that let things get away.

16           So from a migration standpoint we began to have  
17 some better membranes starting about 1980, 1983 here in  
18 this state and other states around the country. And so  
19 we had a little bit of control, so it really was the ones  
20 pre-1980 that had almost no control or very little as far  
21 as migration of landfill gas laterally or downwards.

22           And lately I would say since 1985 to '88 we've  
23 paid a lot of attention to getting better clay systems in  
24 those days. Now we know that clay isn't the way to go  
25 only, so we've added the, made a composite layer.

1           But as you look at your timeframes and what's  
2   happening to your gases, I go back to these curves, this  
3   one in particular. Let's just look at a fairly typical  
4   California type of a landfill. It's fairly dry. Yolo is  
5   a fairly similar one, Mountain View would be the same,  
6   Sonoma would be the same. You have almost the same, I  
7   think, down at the, the L.A. County San Districts. Most  
8   of theirs you're talking 15 to 17 inches of rainfall a  
9   year.

10           There have been some sludges added to some of  
11   those landfills, but basically they have a curve somewhat  
12   like this.

13           When you finish a landfill, say at this point,  
14   the remaining gas that is available is going to extend  
15   for decades.

16           Now you can change that by management as we were  
17   just talking about, the bioreactor type of landfill, but  
18   that's going to be there. And so here I am, this  
19   landfill I was just saying it's enclosed, now let's say  
20   we're taking a look at the non-enclosed one.

21           Well we've got gas, and now we're out at the  
22   perimeter. Let's say we're within ten feet or so of the  
23   perimeter of this landfill. Now that gas, if there's any  
24   pathway of least preference for easy pathway for it to  
25   move, it's going to take it.

1           So if we've had any open channels that we've  
2   dug, pipelines for instance, storm drains, storm sewers;  
3   I've been involved in cases where there have been  
4   explosions and fires in those kind of sewers that have  
5   killed people. They've gone through a landfill. That's  
6   going to take that gas and go for many hundreds of feet  
7   out there.

8           If that gas got in the backfill on trenches it  
9   can move easily through that. Sand strainers, gravel  
10  strainers, jointed rock. So we have an opportunity for  
11  this gas to move out there if we don't do something about  
12  it, we understand that.

13          And if the, if I'm producing at a high rate over  
14  here versus a low rate over here, it's not going to go  
15  quite as far, quite as fast, and as it gets older and  
16  older it just goes downhill.

17          But the interesting thing about methane gas,  
18  landfill gas is that it doesn't take a whole lot of gas  
19  to create a problem. You can ignite it if you've got a  
20  hundred cubic foot.

21          In other words, a small amount at the right  
22  concentration is ignitable, combustible. It is, we call  
23  it explosive gas. It is not explosive in the sand point  
24  of a property, it's a condition.

25          If you put it in a confined space and light it,

1 it's an explosion. The gas itself burns. And it's just  
2 like quick sand, it's a condition if it's going to be  
3 bad, bad acting. It takes a couple of things to be, to  
4 have ignition. You've got to have oxygen, you've got to  
5 have heat, and you've got to have that gas in the  
6 concentration of five to fifteen percent in air, by  
7 volume in air.

8 BOARD MEMBER ROBERTI: What happens if you have  
9 more than fifteen percent?

10 MR. PACEY: It will have to come down to that  
11 level before you can ignite it. It's like having too  
12 rich of a combination of, let's say, in your carbon or  
13 you're not going to ignite anything.

14 It always passes -- that's an interesting  
15 question, because it always passes through that  
16 combustion point from the time it's created to the time  
17 it eventually gets vented. That usually happens in the  
18 soil.

19 Okay. And thank you for the question. Anybody  
20 that has questions, please interrupt.

21 So we know now we have a gas, it's trying to get  
22 out, and we now have protected ourselves, but in the old  
23 days we didn't do that, we didn't know that much about  
24 it. How did we control it if we had that problem?

25 And we have the other one, the emission problem

1     which we can discuss in a moment.

2             But as it moves out laterally and we want to  
3     intercept it, we can do things, we can do a number of  
4     things, we can put a cutoff wall. But if we put that  
5     cutoff wall, we just go to the base of it, and if we  
6     happen to have something more permeable below it will  
7     still go on and on.

8             So we've tried a lot of pass events. Pass  
9     events have worked sometimes, they don't always work.  
10    You've got to really know what you're doing and what  
11    you're getting into.

12            A high water table, they'll work. A high water  
13    table I still like to see a membrane in the trench to go  
14    with what else you put in there.

15            Okay. The, some the toughest ones that you have  
16    to work on or one of the toughest ones I've seen lately  
17    is down at Coyote landfill. I don't know how many of you  
18    know that, but that was in a bedrock condition. It's a  
19    closed landfill, but it's a very large landfill, and it  
20    had some very significant geologic conditions, and the  
21    people were beginning to move into it, and we were  
22    working with the LEA down there, and it was very, very  
23    interesting.

24            The only way you can tell how effective you are  
25    is with the use of monitoring. Monitoring is what proves

1 that you've got control. You have to do enough  
2 monitoring to make sure that you're not getting beyond  
3 the points at which you want to see.

4 Now, I wanted to just get to the point of  
5 soliciting your questions, and I didn't want to say too  
6 much because I know my time is almost used, it's almost  
7 impossible to use fifteen minutes, twenty minutes and  
8 explain much about landfill gas other than try to keep it  
9 very, very simple. All right.

10 So you've had some very significant questions in  
11 the last few days. Did you want to explore some of  
12 those?

13 BOARD MEMBER ROBERTI: Can you, what happens  
14 when the methane -- excuse me.

15 What happens when the methane escapes into the  
16 atmosphere? Can you still maintain ignitable  
17 concentrations?

18 MR. PACEY: If you have an open fissure you can  
19 sustain ignitable conditions at that fissure. And there  
20 have been a number of instances, I remember one case with  
21 the City of Phoenix years ago when we had a problem with  
22 an off-site migration, and they decided to put in some  
23 nice, they put in some precast culvert sections, four  
24 feet in diameter, filled 'em with gravel, and then lit  
25 them. And they said, "These are great little barbecue

1 things."

2 I said, "You realize you can't see that flame in  
3 the daytime so kids will come along, they'll reach over  
4 there and get burned."

5 If it goes through the soil, chances are it's  
6 not ignitable. I've not seen one ignited, so I'm not  
7 saying it can't be done. I've seen cases in the  
8 wintertime in the Phoenix area -- not Phoenix, but the  
9 Pontiac, Michigan area, where there was a snow cover and  
10 it was kind of a frozen condition, and the gas was  
11 actually so, the pressure built up so it just whistled,  
12 it created little holes. And it whistled up through  
13 those holes. You could have lit those holes. And that  
14 was coming through soil. But that was a large, a fairly  
15 large, like a fracture.

16 So you can light 'em. I've seen people light  
17 fires in their offices on landfills. I should mention  
18 that a lot of buildings have been placed on landfills.  
19 And I've been involved in a lot of those. There's office  
20 buildings, Home Depot has done three of 'em already that  
21 I know 'em. Now that's over fifty, fifty-five percent  
22 methane. We can build and we can survive on landfills  
23 that have high concentrations.

24 So it isn't the condition of the gas, it's  
25 whether there is a problem with what you have and whether

1 you're protected. And so usually if you're on a gas  
2 condition you want to; number one, there is a source; and  
3 then you want to know that you're safe from that source.  
4 If things happen and gas is coming towards you, you have  
5 to protect yourself or try to get it stopped at the point  
6 that it's supposed to be stopped at.

7 And that's always been an issue is whose  
8 responsibility is it once it passes that certain line. I  
9 suppose you're wrestling with that here.

10 BOARD MEMBER PAPARIAN: We have a state minimum  
11 standard of five percent at the boundary of a facility, I  
12 guess that's the lower explosive limit as it's been  
13 explained to me, and this is a standard number of what's  
14 used in federal regulations and then also across the  
15 country.

16 Does anybody that you are aware of regulate,  
17 have a tighter number than that, any state that goes  
18 beyond this?

19 MR. PACEY: That's an interesting question  
20 because it's been posed a number of times and there were  
21 times when I've heard people say that. I personally am  
22 not aware of that.

23 There are people that monitor the L.A. city, I  
24 believe, when they first started monitoring that  
25 particular one that had a zero point, zero point at the



1 boundary line of the landfill.

2 BOARD MEMBER PAPARIAN: So the L.A. standard is  
3 zero?

4 MR. PACEY: I don't say it is today, that's what  
5 it was. I mean, at the first monitoring that was put  
6 down. I think practically the background level can be  
7 much higher than that.

8 And if you go out around some of the swamp  
9 areas, and I've been called in on many cases where we've  
10 had just peak bogs, and places where subdivisions have  
11 been developed and people have dug trenches and then  
12 placed the clearing material in those trenches, covered  
13 them up, later developed the houses, found methane.

14 There have been airports that have used earth  
15 fill and they've had, a lot of the burden was not removed  
16 adequately. Those kind of things you can have trace.  
17 When I say trace, less than five percent.

18 You can have two or three percent methane as  
19 background levels in lots of areas, and that always  
20 raises the issue of how safe are you? It's going to go  
21 on for a long, long period of time unless you dig it up  
22 and remove it, which is also hard to define.

23 So we're living in a situation where you, when  
24 you get a source you're always, you've got to have  
25 caution. And monitoring is the only way you're going to

1 understand how to, what's happening from then on unless  
2 you remove it. And it's an interesting position because  
3 that's valuable land in a lot of cases.

4 And when you can actually put buildings on it  
5 and survive and live, and safely, it raises a lot of  
6 issues.

7 So in trying to find out the nature the problem,  
8 the conditions that are surrounding it, and there's many,  
9 many conditions that are out there that could be sources  
10 of it.

11 I was just talking with a gentleman here about  
12 one landfill explosion in Pennsylvania, they had six  
13 potential sources for that. Landfill was one. You can't  
14 always find the source or define it as a landfill only,  
15 you've got to look at all potential sources.

16 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

17 BOARD MEMBER JONES: Mr. Pacey, if a, if in the  
18 monitoring -- well, let me ask another question. If at a  
19 boundary where you're doing monitoring, and on, our  
20 condition is, or it's got high enough gas that you would  
21 monitor it, it's over the five percent you're going to  
22 monitor it; let's say the number was high enough and  
23 there's enough concentration close to the boundary that  
24 you decided to take one of the three methods available  
25 to, you know, to mitigate it, how long -- okay, forget --

1 you're only going to pick one. You're going to plumb the  
2 site to start pulling the gas out, okay.

3 MR. PACEY: That's certainly one way.

4 BOARD MEMBER JONES: That's one way. How long  
5 from the time that you started monitoring to determine  
6 the amount of gas to when you can actually get that site  
7 plumbed and engineered to put in an extraction system?  
8 Are we looking at --

9 MR. PACEY: Well sometimes it can be fairly  
10 short, as from the time you say plumb, you mean put in an  
11 extraction system and begin to manage it. And your  
12 chances are that you're not going to have the entire  
13 perimeter having that same condition.

14 So you'll probably start with your monitoring  
15 programs to find the areas, and then in those areas you  
16 would put in your extraction system, and you would  
17 monitor those probes as you start up your system and as  
18 you can begin to pull your gas.

19 And you can have, if it's a sandy soil and  
20 you've got a modest amount of gas being generated, you  
21 can probably pull that fairly quickly. By quickly I mean  
22 you can do it in a manner of days.

23 If it's a clay soil it's going to take a lot  
24 longer and you may not be, if you pull too much under  
25 certain conditions you're going to pull air in and start

1 to cause, potentially, some fire internally.

2           So you've got to, again, understand what you've  
3 got out there, where you're going to put your extraction  
4 systems, and the problems if you overpull. Because if  
5 you're pulling from extractions, it might pull gas down  
6 through the waste.

7           In other words, if this is my perimeter and I've  
8 got wells over here, and now you're pulling trying to  
9 reach the gas that's out there three hundred feet, and I  
10 haven't got a good cover up here, I'm going to pull my  
11 air right down through there and I'm going to have  
12 problems.

13           So I can't, if I'm too close here and I can't  
14 reach out that far, I'm going to have to go out with  
15 another line probably in the adjacent area. I hope I own  
16 that adjacent area.

17           So you've got to look at your conditions and  
18 look at the type of soil. It's harder to pull it back  
19 through a clay soil. It's harder sometimes, you've got a  
20 fracturous material. I may miss a fracture system that's  
21 over there. I may be able to pull a hundred feet in  
22 certain fractures and miss another one.

23           So again, you've got to again look at your set  
24 of conditions, and keep monitoring, keep adjusting, you  
25 may have to keep adding some wells.

1           Again, one case, that case in Coyote we had to  
2 try, because there was an Impermeable zone of material  
3 that was there, and we had fractures above and below it,  
4 we might have had some gas coming in underneath, so we  
5 had to go in that underlying one as well to see what the  
6 methane was.

7           So you've got to be, really understand  
8 subterranean conditions, subsurface.

9           BOARD MEMBER JONES: And to understand those  
10 conditions through monitoring and what is prescribed to  
11 try to figure out the extent of the problem does take  
12 some period of time.

13          MR. PACEY: One of the things that takes a lot  
14 of time is the investigation sometimes. And then the  
15 monitoring, because with that investigation you then have  
16 a good basis on monitoring.

17          BOARD MEMBER JONES: So you've got basically  
18 three stages: You've got to investigate the problem;  
19 you've got to put in monitoring wells to try to quantify  
20 what the limits in the volume of the material is; and  
21 then you've got to come up with a decision as to how  
22 you're going to remediate it, build that remediation.

23          MR. PACEY: Right.

24          BOARD MEMBER JONES: And that infrastructure to  
25 pull; and then, depending upon those geological

1 conditions, start a process of creating vacuum and  
2 pulling the material to start to get a flow of gas.

3 And at some point you would hope that you would  
4 drop below five percent.

5 MR. PACEY: Yes. And if you don't, you go to  
6 the next level.

7 BOARD MEMBER JONES: Which is?

8 MR. PACEY: Which is you look again, you look  
9 further. You say, all right, this didn't do it, what's  
10 our next opportunity? Next opportunity, for instance, in  
11 Coyote we used down there, an air injection system was  
12 used as well.

13 BOARD MEMBER JONES: And an air injection system  
14 does what?

15 MR. PACEY: An air injection system creates a  
16 pressure that tends to force the gas back or keeps it  
17 from going beyond that level.

18 BOARD MEMBER JONES: Pushes it back in towards  
19 the landfill?

20 MR. PACEY: Or stops the landfill gas from  
21 moving past the air injection blanket. And that's a  
22 vertical wall of air that's created.

23 So it's not easy. As I say, I always expect  
24 surprises with landfill gas and you won't be surprised.

25 But we do have techniques today, I think we've

1 had thirty years of experience, both here and abroad, on  
2 how to handle these problems. I think they're fairly  
3 readily definable today.

4 BOARD CHAIR MOULTON-PATTERSON: Mr. Eaton.

5 BOARD MEMBER EATON: I'll be the one to ask this  
6 since everyone wants to tiptoe around. The issue for us,  
7 at least the debate has been is that there is, at one  
8 time there is, or at least the statute talks about what  
9 our obligations are to protect the public health and  
10 safety as it relates to the gas. And that there's a  
11 policy that the Board adopted long before any of us were  
12 ever here in 1994 that talks about extending a property  
13 boundary in order to control gas migration.

14 So the issue really becomes, and we have now  
15 been asserted by one public agency that somehow we are  
16 violating state law by that policy because we are not  
17 protecting public health and safety by allowing an  
18 extension of a property boundary without any other  
19 controls to control that gas. And the assertion then is  
20 that somehow we are in violation of state law because we  
21 are exceeding it. The debate has raged on.

22 What I heard you say today is that controlling,  
23 as long as you are able to find the source, that's where  
24 you initially hope it can be --

25 MR. PACEY: You have to find the source

1 otherwise you don't know where or what --

2 BOARD MEMBER EATON: Right. When you were  
3 saying that you were talking about the fact that you  
4 might be pulling in more air than other systems other  
5 than extending maybe, you know, where the gas is  
6 migrating, could be just as detrimental?

7 MR. PACEY: Absolutely. Frequently, frequently  
8 you have a number of cases of landfills adjacent to each  
9 other. And if you put down a system on your side of  
10 the -- let's say a road separates the two.

11 If you put down an extraction system on your  
12 side and start to pull the gas, you're going to pull the  
13 gas from the other landfill across as well.

14 And so you've got to be careful on how you do  
15 that so that you don't have, or if there's another source  
16 you're going to start to pull it towards your well. It's  
17 just the same as with the groundwater system.

18 If you start pulling towards your extraction  
19 wells you may cause an adjacent system to contribute to  
20 it. And that may not be the best thing.

21 BOARD MEMBER EATON: Are you aware of other  
22 states, countries, or protectorates in that case, because  
23 there are some, wherein controls are not, initially gas  
24 control system may not be, at least as a first step, the  
25 proper remedy at that time? And do they have, at least,



1 a policy such as ours where the extension of a boundary,  
2 because from what I heard you say, I'm trying to phrase  
3 it so I don't bias my comments to try and get an answer  
4 that people may think I'm trying to get; but I heard you  
5 say that sometimes finding, as you extend out of the  
6 property or to where the gas is migrating, that that  
7 point may be the best point by which to start remedying  
8 the situation.

9 MR. PACEY: Yes. If you have, if you're having  
10 trouble controlling with your normal activities, then  
11 you'll try some other things, because it is, in some  
12 cases, an --

13 BOARD MEMBER EATON: Let me just ask what normal  
14 activities are, because I'm not as familiar as Mr. Jones  
15 is.

16 MR. PACEY: The normal way and one of the  
17 easiest and best ways depending on the configuration of  
18 your landfill is to put the system in the waste  
19 boundaries. That way you're not on anybody else's  
20 property, you're pulling the gas towards you, towards the  
21 landfill.

22 If I'm outside and I have to be on somebody  
23 else's property and I'm pulling it, I may be, in fact,  
24 pulling more gas from a landfill, if I'm extracting now.

25 If I'm using air then that's something else, and

1 I'm stopping it from moving faster.

2 But on the other hand, if I got that air it  
3 might also be moving back towards the landfill, if they  
4 have an extraction system going.

5 Now remember, with Subtitle D this should not be  
6 the same issue because we don't have the problem.

7 BOARD MEMBER EATON: Right. Unfortunately, we  
8 do have some that are un-- let me ask you because you did  
9 make a comment that no matter what happens that gas level  
10 always passes that. Let's say you get a reading of 50 or  
11 60. This had to pass through that five to fifteen range  
12 at some point?

13 MR. PACEY: That's correct.

14 BOARD MEMBER EATON: Is there ever an occasion  
15 where it drops back down? Is it a scientific property  
16 that cannot occur, and if it can occur, under what  
17 circumstances can it occur?

18 MR. PACEY: Well let me just illustrate with  
19 some of the landfills in California that I've monitored.  
20 And I always used to advise my monitoring field people,  
21 and we have a landfill where we're monitoring offsite and  
22 we're picking up ranges of, let's say, twenty percent  
23 methane, let's say, let's monitor, make sure that we,  
24 first of all, check the, during the day, the monitoring  
25 values, because we find that the effects change the ebb

1 and flow of the methane concentration, there's more gas  
2 coping out in the afternoon when it's warmer. So your  
3 worst time if you're monitoring for methane is the  
4 afternoon normally.

5           Okay. So you might read twenty percent in the  
6 afternoon, but you might read zero in the morning. Now,  
7 in that zone it's changed now. Coming up vertically what  
8 is twenty percent still has to pass through. If I happen  
9 to have a match, if there was air, like in a vault box or  
10 something, it could go through a swing during the day  
11 that might pass through that ring. So there's that  
12 potential.

13           But I think most of the people today that are in  
14 the business, the consultants, are aware of these things,  
15 and so they should be understanding of it and try to set  
16 up a system that relates to those needs.

17           BOARD MEMBER EATON: Thank you. Any other  
18 questions of Mr. Pacey?

19           BOARD CHAIR MOULTON-PATTERSON: Thank you so  
20 much for coming. I appreciate it very much. It's been  
21 very informative.

22           MR. PACEY: I enjoyed the opportunity to be with  
23 you.

24           BOARD CHAIR MOULTON-PATTERSON: Before we go on,  
25 we have a number of speaker slips and everything, we are

1 going to need to make a change in the court reporter. Is  
2 your replacement here at this time?

3 So we can go ahead and make that change right  
4 now. So we'll be taking about a five, ten minute break.

5 (Thereupon the evening recess was taken.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1                   CHAIRPERSON MOULTON-PATTERSON: We'll call the  
2 meeting back to order. Ex partes anyone?

3                   BOARD MEMBER EATON: None for me.

4                   Mr. Paparian?

5                   BOARD MEMBER PAPARIAN: Yeah, John Cupps talked  
6 to me regarding Board Member Decertification.

7                   (Laughter.)

8                   CHAIRPERSON MOULTON-PATTERSON: You might have,  
9 some volunteers, right?

10                  Okay. Anyone else?

11                  Did staff want to -- did staff want to make some  
12 comments before we go to --

13                  DEPUTY DIRECTOR NAUMAN: Yeah, I think we should  
14 finish the staff presentation, because we just kind of had  
15 Mr. Pacey give us the overview on gas and now we'd like to  
16 go through our analysis of the policy issue that was  
17 raised in the audit, so I'm going to ask Mark to make  
18 that.

19                  MR. de BIE: In the interest of time, I'll just  
20 hit the highlights. Staff analysis consists of a  
21 background. There was a request from Board members in the  
22 past to outline in much more detail how this policy or why  
23 this policy came together. So the initial part of the  
24 background section talks about a situation back in early  
25 1994 with a couple landfills in Santa Cruz for which the

1 Board was the EA.

2           They had issues of gas, but their permits were  
3 coming forward. And so in the throws of dealing with  
4 those two issues, and outstanding gas violation, but the  
5 need to -- or the perceived need to deal with the permit,  
6 a very outdated permit, and agenda item was generated that  
7 was brought to the Board that outlined procedures for  
8 dealing with long-term violations relative to the Board's  
9 decisions on permits.

10           So, again, the staff's analysis outlines that  
11 historical point of view and then talks about the actual  
12 procedure. And I think the Board members have seen this  
13 several times now in terms of what this procedure is.  
14 There's a flow chart that outlines steps, there are  
15 findings that Board staff made relative to the long-term  
16 violation, things like imminent threat and those sorts of  
17 things.

18           There was another request of the Board to give  
19 more clarification on two points. One was how imminent  
20 threat is defined or immediate threat is defined as well  
21 as good faith effort. And so staff looked back, you know,  
22 in their process, but also were able to pull up a  
23 definitive definition that appears in LEA Advisory number  
24 38 that you will find on page 21-3, last paragraph.

25           That does a very good job in reflecting staff's

1 view and the current definition that staff uses relative  
2 to an immediate or imminent threat.

3           In terms of good faith effort, it's more of a  
4 process where we look at the LEA's enforcement order, the  
5 steps that the operator has taken to comply with that  
6 order and any other information that staff has available  
7 that's given to the branch managers in the P&E Division.  
8 And the branch managers develop a recommendation to the  
9 Deputy Director whether or not this operator is showing  
10 good faith effort. And that's outlined also in the flow  
11 chart.

12           Staff's analysis then goes into some key issue  
13 analysis talking about the, to some extent, pros and cons  
14 issues relative to long-term violations, brings out  
15 information such as that at times the request that's being  
16 made in the permit would actually assist in remediating  
17 the gas problem at the site, discusses issues relative to  
18 old permits and what the Board was debating back in '94,  
19 with this procedure and that is it better to update a  
20 permit that's very hard to enforce or to keep that permit  
21 out there until the violation is corrected, and then act  
22 on that permit.

23           Again, this procedure was developed so that  
24 continued compliance could be -- or there would be a  
25 continued effort towards compliance for the long-term

1 violation but the permit could go forward.

2           And then, again, at the request of the Board, we  
3 sought some analysis relative to the consistency of this  
4 procedure with State statute and regulation. So on page  
5 21-5 you'll see a discussion of the consistency aspect.  
6 And our legal office assisted in putting this together.

7           And, basically, the conclusion is that the  
8 procedure outlined in the long-term violation procedure is  
9 consistent when it is utilized for landfill gas issues,  
10 because if you look at the regulatory, statutory  
11 requirements for landfill gas, there is an allowance for  
12 a timeframe to come into compliance. It's not required  
13 that there be immediate compliance. It recognizes that it  
14 does take time to investigate, plan and develop a  
15 procedure to comply with landfill gas standards.

16           And so when this procedure is applied to landfill  
17 gas, staff was able to conclude that it certainly is  
18 consistent. And historically this procedure has been used  
19 18 times and only for landfill gas. And it's staff's  
20 determination that that's what it will continue into the  
21 future, is that into the future the Board will probably be  
22 confronted with needing to look at a permit and having a  
23 long-term violation. And that long-term violation will  
24 more than likely be gas and not something else.

25           And for that regard, staff was able to first look



1 at various options which we've outlined on page 21-4. And  
2 of those we narrowed it down to Option 5, which focuses on  
3 the relationship between landfill gas regulation  
4 requirements and the Board's need to find consistency with  
5 standards when they're acting on a permit. So it's  
6 staff's proposal in making this recommendation that we  
7 pursue regulatory changes relative to the gas requirements  
8 to clarify how compliance should be measured relative to  
9 the Board's need to act on a permit.

10 CHAIRPERSON MOULTON-PATTERSON: Thank you.

11 Any questions of staff, before we go to the  
12 public?

13 Denise Delmatier, I believe, had to leave. Is  
14 she -- I can't see, because it's dark out there. She did  
15 ask that I read into the record that she had asked to  
16 speak and that she supported the staff recommendation.

17 Rick Best.

18 MR. BEST: Thank you, Chairwoman and Board  
19 members. Rick Best of Californians Against Waste.

20 I appreciate the opportunity to speak on this  
21 issue. And as we indicated in our testimony this morning,  
22 it is our urging of the Board that the Board, at this  
23 point, repeal this policy. As certainly was indicated by  
24 the State Auditor's Report, this is a pretty significant  
25 impact in terms of -- as I think the prior testimony from

1 the engineer representative. I mean this is a significant  
2 danger in terms of the potential for explosive gas.

3 And this is something that really needs to be  
4 taken very seriously. I know that the Board has  
5 considered landfill violations a serious issue. But I  
6 think that the evidence that many of these landfills are  
7 being allowed to continue to operate and not just continue  
8 to operate but actually get permits to expand those  
9 landfills, despite continued violation, I think is a  
10 serious concern. And we believe this policy should be  
11 repealed.

12 Certainly, there may need to be some sort of  
13 other iterations, some sort of allowance. We certainly  
14 recognize the efforts to correct landfill violations take  
15 some amount of time. We certainly recognize that. And  
16 there needs to be some allowance.

17 but, you know, what this policy is allowing isn't  
18 just correcting the violation, but this is allowing for a  
19 permit to expand a landfill. And this is -- I think  
20 Senator Roberti's comments earlier, if they can't maintain  
21 the existing landfill permitting establishment that they  
22 have, why are we going out and allowing for an expansion  
23 of the landfill.

24 It just doesn't make sense from a public policy  
25 perspective to allow these landfills that continue to

1 violate to pursue an expansion of those efforts. So with  
2 that, we would urge that the Board, at this point, repeal  
3 the policy and perhaps have continued discussion of  
4 perhaps a more reasonable approach to dealing with this  
5 concern.

6 Thank you.

7 CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr.  
8 Best.

9 Grace Chan.

10 MS. CHAN: Good afternoon, Madam Chair and Board  
11 Members, Grace Chan with the Sanitation District of Los  
12 Angeles County. I did address this issue this morning  
13 during the item on the Auditor's Report, so I won't repeat  
14 myself.

15 But I would like to say that we believe that  
16 certainly bad actors should be held accountable and have  
17 to accept the consequences of their actions. But it's  
18 important that this policy continue, particularly given  
19 the public service nature of these facilities and the need  
20 for well engineered environmental protection systems.

21 However, as has been said all day long, review  
22 and reevaluation can bring about clarification and  
23 improvement, and therefore we support the staff  
24 recommendation.

25 CHAIRPERSON MOULTON-PATTERSON: Thank you.

1 Mr. Paparian.

2 BOARD MEMBER PAPARIAN: Can I ask you a quick  
3 question? The gentleman we had presenting the information  
4 about landfill gas indicated that there might be some  
5 requirements in the Los Angeles area that are different  
6 than our State standards. He suggested that, at some  
7 point, it was zero percent at the boundary.

8 MS. CHAN: I believe he was talking about the  
9 City of Los Angeles and I'm not real familiar --

10 BOARD MEMBER PAPARIAN: You're not familiar with  
11 their --

12 MS. CHAN: -- with their historical regulations.

13 BOARD MEMBER PAPARIAN: Okay, thanks.

14 CHAIRPERSON MOULTON-PATTERSON: Thank you.

15 Paul Wilman.

16 Mr. Wilman? I guess he went home.

17 Will Dickinson, County of Placer.

18 MR. CARMICHAEL: Madam Chair, Members of the  
19 Board, My name is Thom Carmichael. Mr. Dickinson was here  
20 all day yesterday and had a conflict today. He asked me  
21 to come and represent him and both the Western Placer  
22 Waste Management Authority and the County of Placer,  
23 Department of Facility Services.

24 We would like your Board to consider keeping the  
25 long-term violation policy in tact, because we feel that

1 it has worked in the past, especially in Placer county.

2 And we do not create a public health threat or threat to  
3 the environment.

4 In the mid-nineties, we found ourselves at the  
5 Western Regional Sanitary Landfill in a situation where we  
6 had and outdated permit. We had significant tonnage  
7 exceedances over the permit requirements and we also found  
8 that we're getting some -- the beginnings of a gas  
9 problem.

10 At that time, the LEA looked to the situation,  
11 reviewed it with your staff and decided to issue a Notice  
12 and Order. They did issue a stipulated Notice and Order,  
13 which the authority was signatory to.

14 The order basically asked us to upgrade the  
15 permit and to investigate the gas problem and resolve it.  
16 That order allowed us the time to, number one, go through  
17 the CEQA process and the regulatory process to upgrade our  
18 permit and the time to investigate the gas problem, design  
19 a gas system and install it.

20 We installed a monitoring extraction system and a  
21 flare system. What that led to, I think, was satisfaction  
22 on everybody's part. We did receive and amended permit to  
23 allow us to continue to receive the waste and process the  
24 waste for our citizens. And we also gained compliance  
25 with the gas standard, and therefore the order was

1 rescinded.

2               So based on that, we think the system does work,  
3 it can work, and not create hazards as long as the LEA and  
4 everyone looks at the situation at hand. In our case, we  
5 had no receptors off site. There were no building  
6 structures, underground utilities or anything in the area  
7 in which the gas was migrating. With that, I thank you  
8 for the time to speak.

9               CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr.  
10 Carmichael.

11              George Larson.

12              MR. LARSON: George Larson, Madam Chair, Members,  
13 I am representing Waste Management. In less than two  
14 minutes I'll state that Waste Management supports staff's  
15 recommendation number 5 only with the clarification point  
16 that we ought -- we recommend that the Board consider the  
17 addition of Recommendation 6, which would allow for more  
18 thorough analysis and workshops, while arriving at the  
19 current policy that's in question. It is five years old  
20 and certainly is healthy to revisit policies made in the  
21 past.

22              It occurred through a very deliberate process, so  
23 we'd like to see a very deliberate process before moving  
24 on to a revised or a different policy, and certainly would  
25 support staff's recommendation.

1 Thank you.

2 CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr.  
3 Larson.

4 Chuck Helget.

5 MR. HELGET: Actually, no testimony. I just  
6 wanted to express support for staff's recommendation.

7 CHAIRPERSON MOULTON-PATTERSON: Thank you.

8 Sean Edgar.

9 MR. EDGAR: Madam Chair, Board Members, good  
10 afternoon. Sean Edgar, Edgar and Associates on behalf of  
11 Madera Disposal Systems.

12 This facility -- the facility operated by Madera  
13 Disposal Systems is a public landfill. Madera County  
14 Public Works is the owner of the facility, Madera Disposal  
15 Systems is a private operator. This facility is the one  
16 that has been held up -- that has been referenced as part  
17 of this long-term violation of policy as a success story.  
18 And I briefly we wanted to indicate that Madera Disposal  
19 Systems has authorized me to speak on their behalf to  
20 agree with the staff recommendation, specifically Option  
21 Number 5, that is before you today.

22 A little bit of the success. This policy is  
23 utilized 1996/97, enabled this facility to have the time  
24 required to design, negotiate and fund a landfill gas  
25 system. That gas system was implemented and was also part

1 of the work with the tremendous lifting by Board staff to  
2 work with the operator, with the owner, to design and get  
3 a system implemented that effectively solved the problem.  
4 This was achieved during the period where the landfill  
5 was, in fact, coming forward for a revised permit.

6 Had there not been a policy in place at the time,  
7 the operator and the county would have faced there is no  
8 other facility in the county. The county would have faced  
9 the transportation issue down to the Fresno area, perhaps  
10 further way to that causing some substantial cost  
11 increases concerns.

12 And they were very pleased, and Madera Disposal  
13 would encourage you strongly to support Option Number 5  
14 before you to formalize and regulatory package this  
15 policy, such that in the future, should this facility or  
16 other facilities face similar items, when there is no  
17 demonstrated danger to the public that operators would be  
18 able to utilize this.

19 We'd be happy to answer any questions.

20 CHAIRPERSON MOULTON-PATTERSON: Thank you.

21 That concludes our public speakers.

22 Board members?

23 Senator Roberti.

24 BOARD MEMBER ROBERTI: Madam Chair, I'd like to  
25 make a motion a little bit different from the staff



1 recommendation, and see if it flies. I hope it does,  
2 we'll see. And that is that we suspend the policy and  
3 that the staff report back to us with regulations to  
4 clarify that expansion is not mitigation of a gas  
5 violation and to define as well the words that appear in  
6 our regulations, "good faith effort" and "threat to  
7 public, health, safety or environment" to Take into  
8 consideration matters both related to, yet independent of  
9 explosions.

10 CHAIRPERSON MOULTON-PATTERSON: Thank you. We  
11 have a motion by Senator Roberti.

12 BOARD MEMBER PAPARIAN: I'll second it.

13 CHAIRPERSON MOULTON-PATTERSON: Seconded by Mr.  
14 Paparian. Any discussion?

15 BOARD MEMBER EATON: I'd like to make a  
16 substitute motion, if I may, because I think this is a  
17 real serious issue. And by making my substitute motion, I  
18 want to give -- if you give me the liberty just to make a  
19 few introductory comments, because it's not meant to be  
20 critical of the motion that was put forward by Senator  
21 Roberti and seconded by Mr. Paparian.

22 I don't like Option 5 because I don't think it  
23 gets to the heart of the Auditor's Report. That was just  
24 to get regulatory changes, Senator. Because the issue  
25 really here that we have debated or that was debated over

1 the last couple of days was is it legal under the statute  
2 or not? And we never do get to that issue if we just do  
3 regulatory changes.

4 So my substitute motion would be that, one, we  
5 would suspend the policy until September 1st or a date  
6 whichever we would agree upon, and in the meantime seek  
7 legislative authority for the current policy that's in  
8 place, the 1994 policy. And that the reason for that  
9 being that if the Legislature rejects that legislation,  
10 it's pretty much sure that at least it may not be made to  
11 be determinative of the legal or not legal issue that's  
12 before us.

13 But if we just do regulatory changes then we  
14 never get to the issues in the Auditor's Report. And so I  
15 offer it sincerely with the hope of understanding the  
16 legal issue.

17 BOARD MEMBER ROBERTI: So you're asking that the  
18 Legislature -- that we ask the Legislature to --

19 BOARD MEMBER EATON: You draft a bill based  
20 along -- if it's 1994 policy, right, because that's the  
21 issue right here between the Auditor and public testimony.

22 BOARD MEMBER ROBERTI: To, in effect, establish  
23 the 1994 policy in law.

24 BOARD MEMBER EATON: Correct.

25 BOARD MEMBER ROBERTI: Okay. I don't agree with

1 that, but I understand.

2 BOARD MEMBER EATON: Or, you know, we could seek  
3 some other measure in the legislation. But I cast it in  
4 the 1994 policy not to hide anything, but that's really  
5 the true issue that's here, because as I mentioned to you  
6 before my vote yesterday on many occasions, that one of  
7 the reasons that I was going to continue to vote for the  
8 landfills is that I felt, as Mr. Medina had, I think,  
9 succinctly put, that there was some detrimental reliance  
10 on taking the policy down the road.

11 Yesterday, I heard Mike Remy who, I believe, by  
12 all accounts is one of the foremost authorities in this  
13 area. His credentials, I think, are impeccable.

14 I also have on the other side the auditor who's  
15 making a certain argument strong, and they're both -- I  
16 think we can handle it. But the issue of the legality or  
17 not doesn't get there through regulatory change.

18 BOARD MEMBER ROBERTI: Yes. I'm happy you want  
19 to get to the question of legality, which I think we do  
20 handle through suspension. Although asking the  
21 Legislature to make a change does that. I don't like  
22 asking the Legislature to affirmatively, as I read your --  
23 as I hear your motion, to affirmatively ask for what, in  
24 effect, is a confirmation of the illegal policy except to  
25 put it in statute.

1               BOARD MEMBER EATON: Right. And I understand the  
2 reason, you know -- why you would be skiddish on doing it.  
3 I just don't know how to frame a piece of legislation. If  
4 you framed it the other way, then the question then  
5 becomes we don't -- then we shouldn't have the suspension,  
6 because the issue of legality is still there. And I'm  
7 just trying to, you know, if you can craft something that  
8 deals with it legislatively, whatever that question might  
9 be, in the affirmative of the 1994 policy or some other  
10 iteration, you at least get at the question of legality as  
11 to whether or not this type of process is there.

12              Now, what I don't know in this process with  
13 suspension or legality is are there any others in the  
14 pipeline, as we have done on this Board. And if so, how  
15 do we accommodate them during that period of time. That's  
16 a third one. But if you get to the first two, I think we  
17 can solve the third issue.

18              BOARD MEMBER ROBERTI: Can staff help us,  
19 whatever we mean by pipeline, we all have a different  
20 interpretation.

21              BOARD MEMBER EATON: I'm just saying is there  
22 something where it's similar to, what was it, Billy  
23 Wright, that was in the pipeline that we have given our  
24 firm commitment that we've taken them down the road,  
25 they've either acquired property or they are under a

1 notice and order. I guess that's really what we have to  
2 do, because, at that point, then, we are subjecting  
3 ourselves to some litigation, so we would have to make  
4 some accommodation, whatever that might be, for those,  
5 unless it's a tremendous number. I don't think so, but  
6 that's a third category that we have to contend with.

7 CHAIRPERSON MOULTON-PATTERSON: Staff.

8 MR. de BIE: Staff is only aware of one potential  
9 landfill that may be coming up in the relatively near  
10 future. It's hard to predict exactly when, but perhaps  
11 this year, where currently there is a landfill issue,  
12 whether or not that landfill issue can be resolved before  
13 the permit comes forward or not, you know, we're working  
14 with the LEA. The LEA is working with the operator in  
15 that direction.

16 But we're only aware of one potential -- there is  
17 no permit application that's being processed, so it's not  
18 near term at all.

19 BOARD MEMBER MEDINA: Madam Chair.

20 CHAIRPERSON MOULTON-PATTERSON: Mr. Medina.

21 BOARD MEMBER MEDINA: That's exactly my concern.  
22 I'm loathe to suspend a policy until such time as we have  
23 another policy in place. And if we suspend a policy, what  
24 happens if there are other cases that come down the  
25 pipeline?

1 I have no problem with reviewing current policy,  
2 and even implementing new policy as is necessary. I've  
3 just never made it a practice to suspend a policy until I  
4 had a policy in place to replace it with.

5 MR. de BIE: If I may, maybe --

6 CHAIRPERSON MOULTON-PATTERSON: No. Go ahead,  
7 because we don't have a second yet.

8 MR. de BIE: If I may address that sort of  
9 policy, no policy void kind of thing. Yet, I think,  
10 staff's perception would be if the policy is suspended we  
11 would go to pre-94 when there was no policy. And,  
12 basically, we would be advising LEAs not to bring any  
13 permits forward without standing State minimum standard  
14 violations, because the Board would not be able to find  
15 consistency with the standard.

16 BOARD MEMBER ROBERTI: That would be a pure  
17 interpretation of statute and law or reg as it exists.

18 CHAIRPERSON MOULTON-PATTERSON: Would you, for  
19 me, just say it once again pre-1994?

20 MR. de BIE: Pre-1994 procedures would be any  
21 outstanding State minimum standard violation, where the  
22 Board would be unable to find that facility consistent  
23 with State minimum standards.

24 BOARD MEMBER JONES: Question.

25 CHAIRPERSON MOULTON-PATTERSON: Mr. Jones.

1               BOARD MEMBER JONES: If that were the case, then  
2 would you then order that landfill to cease and desist?  
3 Would you then order that landfill to be shut down?

4               MR. de BIE: No, there's no requirements in regs  
5 to do that. The only default or the only thing that would  
6 not occur is that that permit would not get revised until  
7 such time as the State minimum standard issue was  
8 resolved. So there would be no permit revision. If the  
9 LEA or the operator forced the issue, it would be brought  
10 to the Board.

11              Staff's recommendation would be that we cannot  
12 find a facility in compliance with State minimum standards  
13 and recommend that the Board deny the issue -- or not  
14 concur on the issue to the permit.

15              MR. BLOCK: And just to add to that, with the  
16 exception of, if there is some type of imminent threat,  
17 which is where you might have a potential landfill issue.

18              MR. de BIE: Certainly, in looking at the actual  
19 standard, whatever is prescribed there, but just the fact  
20 that they're in violation of State minimum standards does  
21 not require a cease and desist.

22              CHAIRPERSON MOULTON-PATTERSON: Mr. Paparian.

23              BOARD MEMBER PAPARIAN: Yeah. I'm confident that  
24 if we were to suspend the policy that the Legislature  
25 would be invited by interested parties to take a look at

1 this issue and potentially act on it. I'm not sure I  
2 really see the need for the Board to be the one putting  
3 forward a policy to the Legislature that some of us may or  
4 may not be comfortable with.

5 At the same time, if we pursue potential  
6 regulatory changes, as I understand the procedures, the  
7 Office of Administrative Law would have the opportunity,  
8 at some point, to look at the clear legality or  
9 nonlegality of the proposed regulations that we would want  
10 to implement.

11 BOARD MEMBER EATON: In my question --

12 STAFF COUNSEL BLOCK: Was that a question?

13 BOARD MEMBER PAPARIAN: It was a statement. Am I  
14 right?

15 (Laughter.)

16 STAFF COUNSEL BLOCK: Yes.

17 BOARD MEMBER PAPARIAN: Thank you. Right answer.

18 BOARD MEMBER EATON: But with regard to the  
19 Legislature, you still then -- you've been talking about  
20 this Auditor's Report for the last couple of days. How  
21 are we going to resolve the legality issue through just  
22 doing regulatory schemes?

23 I mean, you either meet the problem head on and  
24 the Auditor basically says -- I'm just -- I can't remember  
25 what page it was on, whether it's a recommendation that



1 she says with regard to this seek legislative authority.

2           DEPUTY DIRECTOR NAUMAN: The Auditor's position  
3 was that we did not have a statutory basis to approve a  
4 permit where there was a violation of state minimum  
5 standards. The staff's analysis, both program and legal,  
6 is that we do believe that we have the statutory basis.  
7 And therefore our recommendation stems from that  
8 assumption.

9           We assume that we have the statutory authority.  
10 What we are saying is, then, through the regulatory  
11 process formalize the procedure that we've been operating  
12 under since 1994.

13           BOARD MEMBER EATON: And then to what you're  
14 saying, then the logical extension is that you agree that  
15 it's legal.

16           BOARD MEMBER PAPARIAN: No.

17           BOARD MEMBER EATON: And I don't think that  
18 that's the position you've taken over the last couple of  
19 days.

20           BOARD MEMBER PAPARIAN: I would differ from staff  
21 in that the regulatory option, in my mind, would include a  
22 review of what is proper and what is the direction we'd  
23 want to take. And the direction I certainly want to take  
24 is different than the existing policy.

25           DEPUTY DIRECTOR NAUMAN: And staff envisioned

1 that. Let me clarify that what we're talking about is  
2 developing through a regulatory process a procedure that  
3 the Board wants to utilize in the future which may look  
4 something like the '94 procedure or it may look different.  
5 But we're, again, just taking the position that we have a  
6 statutory basis to allow permits to be concurred with  
7 where there is an outstanding violation, and that the  
8 staff would propose to work with the Board to fine tune a  
9 procedure that fits your needs for today.

10 BOARD MEMBER EATON: And you believe that that  
11 would then not need legislative authority?

12 DEPUTY DIRECTOR NAUMAN: That's the --

13 BOARD MEMBER EATON: If you pursued that? And  
14 I'm saying that that doesn't make sense to me, because if  
15 it's good regulatorily one way, that you don't need to  
16 seek legislative authority, the opposite is true because  
17 you've still got a regulatory package.

18 It doesn't matter what the substance is, because  
19 what is the distinguishing factor from not having to seek  
20 legislative authority. And the only reason why I'm saying  
21 legislative authority, is because it ends in debate. If  
22 you get rejected, it's done, don't worry about it.

23 Now, you know, and regulatorily we still are in  
24 this quandary about trying to massage a policy.

25 BOARD MEMBER ROBERTI: Not necessarily, Danny, if

1 we're rejected, we're in the same position for the most  
2 part. We don't have --

3 BOARD MEMBER EATON: If you're rejected, you  
4 don't have any legislative authority.

5 BOARD MEMBER ROBERTI: No, we fall back to the  
6 original legislation. And if we fall back to the original  
7 legislation, we fall back to the pre-1994 regs or nonregs,  
8 which the Auditor seems to indicated are consistent with  
9 the earlier legislation.

10 BOARD MEMBER EATON: But that would be in  
11 agreement with where you're coming from, because at this  
12 point they have to meet State minimum standards. I  
13 understand where you're coming from. I think we're  
14 getting there. I'm just saying that, at that point, if  
15 they reject it, and the pre-94 policy was they have to  
16 meet the State minimum standards, or otherwise they can't  
17 bring their permit forward. So you would never see a  
18 permit like Billy Wright.

19 BOARD MEMBER ROBERTI: That's right. My  
20 difficulty with your substitute motion is that I do not --  
21 as I hear it, I do not want to invite the Legislature to  
22 concretize in the statute what we have quote, "illicitly"  
23 unquote, I'm saying that because I can't think of another  
24 word and not to be castigating anybody, put into  
25 regulations.

1                   BOARD MEMBER EATON: I fully understand. I mean,  
2 you know, I'm a straight shooter when it comes to that. I  
3 understand that that's a kind of role of the dice, but  
4 otherwise I think too often we dance around it. And, you  
5 know, either we roll the dice as a high stakes. I mean,  
6 because I think in some ways, I'm still in a quandary, but  
7 I did make a commitment to you after Billy Wright. And I  
8 said it publicly, that I would look at this again and try  
9 to come to some resolution.

10                  I'm happy if, you know, you want to take a look  
11 at a policy again, because I believe then perhaps my  
12 substitute motion may be appropriate at a later date if we  
13 can't come to some resolution with regard to your motion.

14                  But then I would be in a situation where  
15 suspension becomes very difficult for me, because then I  
16 don't see and ultimate resolution to the issue barring one  
17 of us not being here for the vote.

18                  (Laughter.)

19                  BOARD MEMBER ROBERTI: I'm trying to work  
20 something else out.

21                  BOARD MEMBER EATON: But you're right. I'm not  
22 trying to hide the ball that the Legislature, what it  
23 does, basically, is put all the respective stakeholders in  
24 the hands of another entity and we kind of know that for  
25 some it's a favorable situation and for others a not so

1 favorable situation. So I'm not trying to hide.

2 BOARD MEMBER ROBERTI: Would you be in favor of  
3 anything which would suspend the regulation -- the policy,  
4 and during that suspension we, this is similar to my  
5 motion, we work on something -- I guess the other thing is  
6 we give it a time certain. We give it a time certain.

7 It's just very difficult for me to vote, which I  
8 couldn't vote, vote to invite the Legislature to put in  
9 statute what we now have in policy, which would make what  
10 I just dislike even stronger, assuming they did that,  
11 which I don't think they will do.

12 BOARD MEMBER EATON: That's not my intent to put  
13 a gun to your head. It's really to get the resolution,  
14 because I think, for me at least, that becomes the crux of  
15 the issue based upon the science that we've heard through  
16 enumerable discussions, as well as the two yesterday  
17 between the Auditor and, you know, some of the legal  
18 experts.

19 I think that's the quandary I still, kind of,  
20 find myself in. So I guess that maybe still a three three  
21 vote for the time being. So if you want, for purposes,  
22 while I give it some thought, I'm happy to withdraw my  
23 substitute motion.

24 BOARD MEMBER ROBERTI: Why don't we take a vote  
25 on mine so.

1 BOARD MEMBER EATON: Okay.

2 BOARD MEMBER ROBERTI: Why don't we take a vote  
3 on mine, so I --

4 BOARD MEMBER EATON: But at least, you understood  
5 where I was trying to go and, I'm trying to meet that  
6 obligation in a way that at least we get some final  
7 resolution. And from what I'm hearing, you know, whether  
8 it be down memory lane or other kinds of things, we keep  
9 going. And I made the remark to someone this afternoon,  
10 you know, the issues still are there. The players just  
11 change that are up here on the dais, you know. And some  
12 of these have been reiterated and debated. And once in  
13 awhile it's good to have a final resolution.

14 So that was my, you know, impetus for bringing it  
15 up. So let's just hear your motion and I'll withdraw my  
16 substitute motion, too.

17 BOARD MEMBER ROBERTI: I'm moving that we suspend  
18 until September -- no I'm not moving. I'm just moving to  
19 suspend no time certain, and that we pursue a regulatory  
20 remedy which defines the words "good faith effort" and  
21 "threat to public health, safety or environment" and  
22 clarify -- and then defines those words to include matters  
23 that are beyond explosions of the periphery, which I  
24 believe parenthetically which is the ultimate reason we're  
25 doing it right now, and that clarifies that expansion is

1 not mitigation of a gas violation.

2 CHAIRPERSON MOULTON-PATTERSON: We have a motion  
3 that Senator Roberti just restated and a second by Mr.  
4 Paparian.

5 Please call the roll.

6 SECRETARY VILLA: Eaton?

7 BOARD MEMBER EATON: No.

8 SECRETARY VILLA: Jones?

9 BOARD MEMBER JONES: No.

10 SECRETARY VILLA: Medina?

11 BOARD MEMBER MEDINA: No.

12 SECRETARY VILLA: Paparian?

13 BOARD MEMBER PAPARIAN: Aye.

14 SECRETARY VILLA: Roberti?

15 BOARD MEMBER ROBERTI: Aye.

16 SECRETARY VILLA: Moulton-Patterson?

17 CHAIRPERSON MOULTON-PATTERSON: Aye. Okay,  
18 well --

19 BOARD MEMBER EATON: No, I mean, I'll just try  
20 and -- it's been a long day, so I don't think I have many  
21 brain cells left.

22 CHAIRPERSON MOULTON-PATTERSON: I could support  
23 your motion if it wasn't sending, it sounds like such a  
24 positive message to the Legislature about the '94 policy.

25 BOARD MEMBER EATON: We're just asking them to

1 affirm. And I fully am sympathetic to that position. So  
2 I guess I'm trying to think of a way that's not casting in  
3 the affirmative, but in a more neutral manner, I guess, is  
4 probably what might be a more --

5 MR. de BIE: Mr. Eaton, if I might try to assist.  
6 From staff's point of view, and I'll look to legal for  
7 some assistance on this, but staff's point of view seemed  
8 to be the statutory crux was in 440092, where it talks  
9 about the Board's determining that the permit is not  
10 consistent with State minimum standards. It's that term  
11 consistent, it doesn't say compliance, which in Board  
12 staff's point of view, historically has been, sort of, a  
13 black and white, either you are or you're not in  
14 compliance.

15 But how is consistent to be defined and what  
16 criteria is used to define consistency? The current  
17 procedures give staff the tools to define consistency. So  
18 perhaps if something were to be brought in a legislative  
19 venue, it would be an attempt to define consistency, how  
20 the Board should -- or even broader, does the Board --  
21 what is the Board's authority in defining consistency? Is  
22 it compliance? Is it black and white?

23 Yes, you are or you're not or do they have the  
24 ability to put into place regulations that help define a  
25 process for determining consistency. So it might be just



1 more generic and broad proposal in that regard.

2           DEPUTY DIRECTOR NAUMAN: Or the alternative is  
3 not to pursue it legislatively, but instead to define a  
4 procedure that you want to utilize to deal with the same  
5 question that Mark is talking about, how do you want to  
6 define consistency for purposes of acting on permits. Run  
7 that through the regulatory process and you have another  
8 point of validation through the Office of Administrative  
9 Law, who will be back to you if they don't think you have  
10 the statutory authority for that scheme.

11           BOARD MEMBER EATON: I, guess you know, my  
12 quandary, to some extent, is going back to the Auditor's  
13 report. And without the recommendation and the crux of  
14 their analysis and conclusion, and I'm reading "this  
15 policy i.e. long-term violation, is inconsistent with  
16 State law."

17           So that being key point number one. And does not  
18 yield the results that are in the State's best interest.  
19 It allows long-term violations that affect the environment  
20 or public health to go uncorrected for extended periods.

21           And if the policy doesn't provide for any  
22 operators to correct their violations promptly, I believe  
23 we can craft regulations that can correct those problems  
24 more promptly. There's no question about that.

25           I think that, you know -- and you can also

1 correct those problems that affect the public health and  
2 environment for extended periods because you could shorten  
3 that period as well. The question then is even if you do  
4 that, is it inconsistent with the crux of what the  
5 Auditor's Report says, is it inconsistent with State law.  
6 And that's all I'm trying to get at, quite frankly.

7           And I don't feel that in the Auditor's Report we  
8 just can't disagree with the Auditor or anything. But it  
9 is an issue, because I think, at least from my  
10 perspective, that while law can be black and white, the  
11 issues that you've raised, sometimes it does take time to  
12 do.

13           So do we need to seek a more general broad  
14 authority for this kind of policy and then work on the  
15 regs or something along those lines or, you know, as long  
16 as my fellow colleagues wouldn't be, you know, sort of  
17 adverse to putting aside the issue of State law and the  
18 validity of it and we can work through and see if there is  
19 a broad legislative authority that can be proposed and  
20 then have other regulations flow from that, which would be  
21 a policy that would then fit consistent with the issue.

22           Because the crux of the issue is do we have the  
23 authority or not to have any kind of policy as it relates  
24 to these violations? And I think that's what I heard at  
25 least the Auditor say today. I also heard the experts,

1 legal, who I respect say, you know, it's completely  
2 consistent.

3 DEPUTY DIRECTOR NAUMAN: We have a difference of  
4 opinion with the auditors. We believe you have the  
5 authority to establish a regulatory process.

6 BOARD MEMBER MEDINA: That's my problem with it  
7 is that, you know, I am not comfortable with imposing a  
8 policy if it's inconsistent with State statute. In this  
9 case I'm being told it is and on the other hand that it  
10 isn't. And so we either change the policy or modify the  
11 expansion.

12 If the Senator and Mr. Paparian were so inclined  
13 to draft a new policy, I would certainly give it a  
14 consideration if it's better than what we have in place.

15 BOARD MEMBER ROBERTI: Well, then with that  
16 little opening, would you be willing to suspend for one  
17 month, we don't have anything coming up, and then pending  
18 the redraft of the policy in which case it would be  
19 reinstituted whenever our next meeting is, February, if we  
20 haven't passed an alternative policy?

21 DEPUTY DIRECTOR NAUMAN: I would just caution you  
22 that it will probably take us longer than a month to craft  
23 a new approach, because you've heard a lot of stakeholders  
24 today say they want to participate in any deliberations.

25 BOARD MEMBER ROBERTI: Two months?

1 BOARD MEMBER JONES: Madam Chair?

2 CHAIRPERSON MOULTON-PATTERSON: Mr. Jones.

3 BOARD MEMBER JONES: Mr. Medina -- I'm kind of  
4 intrigued by that offer of Mr. Medina's, you know, if  
5 there's -- if you can come with a better policy, but I  
6 think that while you're coming up with that policy, we  
7 should leave the existing policy in place, not suspend it,  
8 so that we can see what comes forward. If there's none --  
9 if there are none in the hopper, no harm, no foul.

10 BOARD MEMBER ROBERTI: Well, then that's just  
11 resetting and agenda item.

12 BOARD MEMBER JONES: But waiting for guys to come  
13 up with a policy, but keeping the existing policy in  
14 place --

15 BOARD MEMBER ROBERTI: It's better than nothing,  
16 but what do we do? Do we reschedule that or does that  
17 take a motion?

18 CHAIRPERSON MOULTON-PATTERSON: Just before, I  
19 need a clarification, what does it hurt -- I'm not being  
20 argumentative, Mr. Jones. But what does it hurt to  
21 suspend it if there's nothing coming forth in two months  
22 anyway?

23 BOARD MEMBER JONES: Because I'm not -- we don't  
24 have anything in its place and that doesn't make any sense  
25 to me. It's been a policy that's been here since '94. I

1 think it's consistent with State minimum standards and we  
2 have a difference of opinion on that.

3 And if there is another policy that comes forward  
4 that can take its place, that's fine. If there isn't  
5 something that comes forward that takes its place, do we  
6 then have a void because we've suspended it.

7 BOARD MEMBER ROBERTI: Madam Chair, I would like  
8 to move, if the motion is proper, that at our meeting in  
9 two months, which is, what, the Glendale meeting --

10 CHAIRPERSON MOULTON-PATTERSON: Yes.

11 BOARD MEMBER ROBERTI: -- that staff come up with  
12 a proposal to tighten the current policy on long-term  
13 violations indicating that "good faith effort, threat to  
14 public health, safety or the environment" are matters that  
15 contain restrictions larger than explosion of the  
16 periphery, and that expansion is not mitigation, and that  
17 after a do-notice is made to all the stakeholders, that  
18 proposal be returned to the Board for consideration at the  
19 Glendale meeting --

20 CHAIRPERSON MOULTON-PATTERSON: March 20th.

21 BOARD MEMBER ROBERTI: -- March 20th.

22 BOARD MEMBER JONES: Can I ask a question on your  
23 motion. Were you done with the motion, I'm sorry.

24 BOARD MEMBER ROBERTI: Yeah, I'm done.

25 BOARD MEMBER JONES: You want staff to come up

1 with the policy. I thought that you and Mr. Paparian were  
2 going to.

3 BOARD MEMBER ROBERTI: Yes, we're going to come  
4 up with -- we're going to work with staff, but if you  
5 want --

6 BOARD MEMBER JONES: Because it puts staff in a  
7 tough position, because they're saying they disagree  
8 with -- that they disagree with the Auditor.

9 BOARD MEMBER ROBERTI: No, no, no, no. Staff are  
10 technicians. And we know they disagree, but I'm sure when  
11 I was in the Legislature, I asked legislative counsel,  
12 500,000 times to draft legislation for me, and I never  
13 asked them whether they agreed or not. And I suspect that  
14 50 percent of the time, at least, they disagreed.

15 (Laughter.)

16 BOARD MEMBER ROBERTI: So I'm speaking with  
17 them --

18 BOARD MEMBER JONES: Are those the 50 percent  
19 that didn't get voted through?

20 (Laughter.)

21 BOARD MEMBER ROBERTI: Fortunately, I was the  
22 leader, so I was able to not pay quite as much attention  
23 to disagreement.

24 BOARD MEMBER EATON: We're kind of putting the  
25 staff like the LEAs, you know.

1 (Laughter.)

2 BOARD MEMBER ROBERTI: I'm just speaking to them  
3 as technicians. I mean with the full understanding and  
4 they can asterisk anything they come up with, that they  
5 agree with the present policy. But who do we ask if we  
6 don't ask our counsel and don't ask our staff. I don't  
7 suspect Ms. Tobias agrees with all the laws that she's  
8 asked to interpret for us, but she's a technician. And as  
9 Mr. Ashcroft claims, he's going to have to --

10 (Laughter.)

11 BOARD MEMBER ROBERTI: She doesn't like that  
12 comparison, I'm sure.

13 (Laughter.)

14 BOARD MEMBER ROBERTI: I'm speaking to them as  
15 technicians only.

16 DEPUTY DIRECTOR NAUMAN: I think that the staff  
17 can come up with some ideas for you and we can do our best  
18 to involve stakeholders during this timeframe.

19 BOARD MEMBER ROBERTI: They're the best to  
20 involve stakeholders much more than the Board office.

21 DEPUTY DIRECTOR NAUMAN: We'll do what we can.  
22 I'm fully prepared to do this. I just want to caution  
23 everybody, particularly in the audience as stakeholders,  
24 the timeframe for doing this will be tight. And the  
25 opportunities for input will be somewhat limited in that

1 our deadline for getting our item into our system will be  
2 March 5th.

3 So we have between now and then to craft some  
4 ideas, run that by the stakeholders and then prepare and  
5 agenda item for you for your March meeting. So we're  
6 fully prepared to do that just everyone recognizing that  
7 the opportunities for input will be shortened.

8 CHAIRPERSON MOULTON-PATTERSON: So you have a  
9 motion and --

10 BOARD MEMBER EATON: Two in February.

11 CHAIRPERSON MOULTON-PATTERSON: Mr. Cupps, I see  
12 you standing there, but I wanted to get a second on this.

13 BOARD MEMBER PAPARIAN: Second.

14 CHAIRPERSON MOULTON-PATTERSON: Did you wish to  
15 speak, Mr. Cupps?

16 MR. CUPPS: Yes, I did.

17 CHAIRPERSON MOULTON-PATTERSON: Come forward.

18 MR. CUPPS: My name, for the record, is John  
19 Cupps. I'm an independent consultant. Without regards to  
20 the merits of, you know, what the Board does to ultimately  
21 resolve this issue, I think that you really ought to  
22 consider, rather than adopting a policy, because frankly a  
23 policy has no force and effect of law. It's something  
24 that, frankly, you can ignore from a strictly legal  
25 standpoint.



1 I would strongly urge the Board to consider,  
2 whatever the resolution is, that it be done in the context  
3 of regulations rather than just another policy that really  
4 doesn't have the force and effect of law.

5 CHAIRPERSON MOULTON-PATTERSON: Didn't you say  
6 regulations?

7 DEPUTY DIRECTOR NAUMAN: That's been the staff's  
8 recommendation to you all along, regardless of what  
9 process you come up with, just regulations.

10 CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr.  
11 Cupps.

12 BOARD MEMBER ROBERTI: Thank you, Mr. Cupps, for  
13 clarifying. Please read regulation into my motion.

14 CHAIRPERSON MOULTON-PATTERSON: Okay. So is  
15 everyone clear on Senator Roberti's motion and Mr.  
16 Paparian's second.

17 CHAIRPERSON MOULTON-PATTERSON: Mr. Cupps.

18 MR. CUPPS: I'm sorry. But if, in fact, it's  
19 going to be a regulation, then, of course, there are a  
20 number of procedures in place that require public notice,  
21 statement of reasons, all kinds of procedural requirements  
22 that are part and parcel of adopting a regulatory package,  
23 which I assume that if, in fact, we are talking about  
24 regulations, would have to be followed. And I think that  
25 that interferes with the timeframe of March 5th.

1 BOARD MEMBER ROBERTI: Well --

2 MR. CUPPS: At a minimum, you're talking about 45  
3 days public notice of the proposed regulations. And  
4 there's a number of things that go into that process.

5 CHAIRPERSON MOULTON-PATTERSON: Is that right,  
6 Mr. Block?

7 STAFF COUNSEL BLOCK: Well, we certainly could --  
8 the Board would not be able to complete the regulatory  
9 process by the March meeting. But I didn't hear that that  
10 was what was being talked about. What I heard was the  
11 development of a revised policy, if you will, or the  
12 concept and then once that Board agrees to it --

13 DEPUTY DIRECTOR NAUMAN: Agrees to it, gave staff  
14 direction to then proceed with turning that approach, that  
15 concept, into a regulatory package.

16 STAFF COUNSEL BLOCK: And then actually really at  
17 this point in time, the Board would have the option either  
18 directing that proposal to go towards regulations or  
19 actually even still the other idea of legislation which  
20 was talked about.

21 DEPUTY DIRECTOR NAUMAN: That's true.

22 CHAIRPERSON MOULTON-PATTERSON: Does the  
23 office -- excuse my ignorance here, but does the Office of  
24 Administrative Law get involved in this?

25 STAFF COUNSEL BLOCK: It would be involved once

1 we started the regulatory process, but not before that.

2 CHAIRPERSON MOULTON-PATTERSON: Not before that.

3 Thank you.

4 So we have a motion by Senator Roberti and

5 seconded by Mr. Paparian. Please call the roll.

6 SECRETARY VILLA: Eaton?

7 BOARD MEMBER EATON: No.

8 SECRETARY VILLA: Jones?

9 BOARD MEMBER JONES: No.

10 SECRETARY VILLA: Medina?

11 BOARD MEMBER MEDINA: Can you read that motion?

12 CHAIRPERSON MOULTON-PATTERSON: Read the motion

13 again, please.

14 (Laughter.)

15 CHAIRPERSON MOULTON-PATTERSON: Senator Roberti,

16 or is anyone taking it down here.

17 BOARD MEMBER EATON: For clarifying purposes, if

18 I can, aren't we just back to number 5?

19 BOARD MEMBER ROBERTI: Let me --

20 BOARD MEMBER EATON: Isn't what Mr. Cupps just

21 relayed, number 5?

22 DEPUTY DIRECTOR NAUMAN: With a date certain,

23 well, that we come back to you in March.

24 BOARD MEMBER EATON: And the only difference

25 would be is that policy is not suspended.

1 BOARD MEMBER ROBERTI: With some specifics  
2 highlighting certain -- it's not suspension and with  
3 specifics that certain words not exclusively but certain  
4 words be considered good faith --

5 CHAIRPERSON MOULTON-PATTERSON: Read them in one  
6 more time, please. Thanks.

7 BOARD MEMBER ROBERTI: That staff come back at  
8 the Glendale meeting with a regulatory proposal, which --

9 DEPUTY DIRECTOR NAUMAN: That's a concept for a  
10 regulatory proposal. We will not be able to come back  
11 with a regulatory package.

12 BOARD MEMBER ROBERTI: With a concept for a  
13 regulatory proposal that includes a definition of "good  
14 faith, threat to public health, safety or environment,"  
15 which are more restrictive on permits than merely a  
16 designation that these words refer to explosions of the  
17 periphery and that expansion is not mitigation of a gas  
18 violation.

19 CHAIRPERSON MOULTON-PATTERSON: Thank you,  
20 Senator Roberti for repeating it again.

21 BOARD MEMBER ROBERTI: I might have actually  
22 memorized it.

23 (Laughter.)

24 CHAIRPERSON MOULTON-PATTERSON: We have a second  
25 by Mr. Paparian. We have Mr. Eaton.

1               BOARD MEMBER EATON: Senator, would you consider,  
2 because as you put the more restrictions in, that's the  
3 same argument that you used against me for casting it in  
4 the affirmative. So when we're doing the legislation, if  
5 we just do it in more the general -- and I don't care  
6 because I think staff gets essentially the drift, if you  
7 just meet what the Auditor had written as their  
8 recommendation which meets the -- to the extent using that  
9 language that's a much broader concept.

10              BOARD MEMBER ROBERTI: Using the auditor's report  
11 as a --

12              BOARD MEMBER EATON: No, no, no. I'm just trying  
13 to read the comment. I think it was on 21, that was just  
14 basically staff would develop -- that's the page before  
15 it. I apologize. Let me just try and figure it out here.

16              I had the language right here, that staff would  
17 develop a regulatory package. And what I'm reading from  
18 Senator and Board members is 32-6, bottom of the page,  
19 where it says Chapter 1, page 18 paragraph 3.

20              "That staff will develop a policy that is not  
21 inconsistent with State law..." I mean you could read it  
22 that way. That gives you a broad concept that without it,  
23 it's more neutral instead.

24              BOARD MEMBER ROBERTI: I don't see where the  
25 language is.

1 BOARD MEMBER EATON: If you read that just --

2 BOARD MEMBER ROBERTI: Well, I can't -- the  
3 problem with that is staff doesn't believe -- on this,  
4 staff's position then is relevant and staff doesn't think  
5 the Auditor is correct, so we can't --

6 DEPUTY DIRECTOR NAUMAN: No, the content of a  
7 concept is independent of the discussion of whether or not  
8 you've got statutory authority or not. You're asking us  
9 to, from a technical perspective, to develop some concepts  
10 that you may choose to pursue as a regulatory package or  
11 at a later point in time you may decide to choose to  
12 pursue that legislatively.

13 BOARD MEMBER EATON: But I may not be asking you  
14 to develop a concept that just goes to restrictive. It  
15 may be to allow for more other things, because one of the  
16 concerns that I have is if you have too restrictive of a  
17 policy, we're right back where we shouldn't be, which is  
18 basically being able to provide those individuals that  
19 have a legitimate problem, as we heard testimony, not  
20 these individuals who have long-term violations, but  
21 people who really have a legitimate problem, to have some  
22 allowance for them.

23 So conceptually, that's what I'm trying to get at  
24 with a much broader -- you can always work and develop the  
25 narrower options.

1               DEPUTY DIRECTOR NAUMAN: Or perhaps we can do a  
2 little bit of both and item that we're bringing forward in  
3 March understanding the particular issues that the Senator  
4 is concerned about, we can show you how a concept could  
5 incorporate those particular items, as well as perhaps a  
6 broader concept. So maybe we can come back with two or  
7 three alternative approaches that you could then take a  
8 look at.

9               BOARD MEMBER MEDINA: From my perspective, that  
10 would be a good approach, because whether the policy is  
11 legal or illegal, from my view, of the Senator's is that  
12 he wants the policy more consistent with certain things.

13              BOARD MEMBER ROBERTI: I want a policy -- I want.

14              (Laughter.)

15              BOARD MEMBER ROBERTI: I want a policy --

16              BOARD MEMBER EATON: You demand a policy.

17              (Laughter.)

18              BOARD MEMBER ROBERTI: I used to, but I don't do  
19 that anymore. I want a policy --

20              (Laughter.)

21              BOARD MEMBER EATON: That's not what the  
22 gentleman said about us today.

23              (Laughter.)

24              BOARD MEMBER ROBERTI: I would like to see a  
25 policy more consistent with the Auditor's report.

1                   BOARD MEMBER EATON:   And that's all I'm trying.

2   I mean you know, you can --

3                   CHAIRPERSON MOULTON-PATTERSON:   So taking into  
4   consideration, didn't they say there was just a disconnect  
5   between the regulation in State law and that you would be  
6   coming back with a regulation that we felt was more of a  
7   connection?   Is that over simplifying it?

8                   DEPUTY DIRECTOR NAUMAN:   The Auditors believe  
9   that we don't have any statutory basis to have any kind of  
10   a policy that allows you to act -- to concur on a permit  
11   where there's a violation of State minimum standards, so  
12   that's and absolute position.   There is no authority.

13                   Staff is taking the position that we feel that  
14   there is some authority to do that.   Now, how you do that  
15   goes to some of the issues I think the Senator was  
16   raising.

17                   BOARD MEMBER ROBERTI:   We're all in agreement --  
18   well, we're basically in agreement to have staff come back  
19   with repropoals for regulation.   The issue is how do we  
20   commission them to go there?   I'm a little bit reluctant  
21   to give language that is totally neutral in view of the  
22   staff's honest broker but stated position that they  
23   disagree with the Auditor.

24                   That puts me in the position of voting for  
25   something which could be weaker than what we have right



1 now and for any number of reasons, environmental to  
2 political, I don't want to do that.

3 BOARD MEMBER EATON: Well, I'll make a suggestion  
4 and you'll probably have four -- I know I'll have at least  
5 two individuals sort of upset. I would propose that we  
6 accept the Senator's motion with the caveat that Board  
7 Member Steve Jones and Board Member Roberti develop the  
8 language.

9 (Laughter.)

10 BOARD MEMBER ROBERTI: We work on it.

11 BOARD MEMBER EATON: Work out the language to --

12 BOARD MEMBER PAPARIAN: We're talking about  
13 regulations not entertainment.

14 (Laughter.)

15 BOARD MEMBER EATON: Can you work with staff to  
16 develop it?

17 BOARD MEMBER ROBERTI: We'll work with staff.  
18 I'm always happy to work with Mr. Jones. I find his  
19 discussions with me to be very entertaining.

20 BOARD MEMBER MEDINA: That sounds like a very  
21 good recommendation.

22 (Laughter.)

23 BOARD MEMBER ROBERTI: But I think we should work  
24 with staff.

25 BOARD MEMBER EATON: Right. That's what I'm

1 saying. I mean, that's -- but I am sorry, Mr. Jones, I  
2 volunteered you, but you know --

3 CHAIRPERSON MOULTON-PATTERSON: Do you want to  
4 add that to your motion? There is a motion on the floor  
5 and I'm not going to ask you to repeat it again.

6 BOARD MEMBER ROBERTI: I don't think it is  
7 necessary. I'll promise to work with Mr. Jones and any  
8 other member, but Mr. Jones is the stated bearer of the  
9 torch for the status quo.

10 (Laughter.)

11 And I'm not trying to be nasty, Steve.

12 BOARD MEMBER JONES: I don't find that offensive.

13 CHAIRPERSON MOULTON-PATTERSON: We have a motion  
14 by Senator Roberti, seconded by Mr. Paparian.

15 Please call the roll.

16 SECRETARY VILLA: Eaton?

17 BOARD MEMBER EATON: Aye.

18 SECRETARY VILLA: Jones?

19 BOARD MEMBER JONES: Aye.

20 SECRETARY VILLA: Medina?

21 BOARD MEMBER MEDINA: Aye.

22 SECRETARY VILLA: Paparian?

23 BOARD MEMBER PAPARIAN: Aye.

24 SECRETARY VILLA: Roberti?

25 BOARD MEMBER ROBERTI: Aye.

1 SECRETARY VILLA: Moulton-Patterson?

2 CHAIRPERSON MOULTON-PATTERSON: Aye.

3 BOARD MEMBER EATON: Just like those permits.

4 CHAIRPERSON MOULTON-PATTERSON: Okay.

5 Next number 20 and then 22.

6 DEPUTY DIRECTOR NAUMAN: Item 20 is Consideration  
7 of Approval to formally notice proposed regulations for  
8 the transfer/processing of putrescible material and to  
9 pursue a change in the statutory definition of transfer  
10 processing. Bob Holmes, he will make the presentation.

11 MR. HOMES: Good evening, Chairperson and members  
12 of the Board. Just a quick background to set the context  
13 for how we got to this item.

14 Approximately 12 months ago or longer an operator  
15 in the San Bernardino County began discussions with the  
16 San Bernardino County Local Enforcement Agency with  
17 respect to their proposed facility that would transfer  
18 organic materials.

19 During that discussion, the LEA made the decision  
20 that the facility did not require a solid waste facility's  
21 permit because it met the two-part test that is contained  
22 in Board regulations because the material was source  
23 separated and was less than ten percent, had less than ten  
24 percent residual.

25 That decision by the LEA was appealed to the

1 local hearing panel by a neighborhood association. The  
2 local hearing panel decision was that a solid waste  
3 facilities permit was required for the facility.

4           The decision of the local hearing panel, in turn,  
5 was appealed by the Local Enforcement Agency to this Board  
6 and you heard that appeal in August. Your decision was  
7 similar to that of the local hearing panel that a solid  
8 waste facility's permit was required. And, at that time,  
9 you directed staff to return to you with an item that  
10 would allow you to consider whether or not you wanted to  
11 change or we needed to change Board Regulation to handle  
12 this type of activity, that is the transfer of organic  
13 materials.

14           You can see from the title that we've done that,  
15 given you the opportunity to look at the regulations and  
16 also, in turn, we have identified, at least from the  
17 staff's position, that legislative change may also be  
18 necessary.

19           You also see from the title that we had  
20 aspirations to bring you actual regulatory text and get  
21 approval from you to go out to a 45-day comment period.  
22 There were some decisions that needed to be made and some  
23 direction we needed to get from you in the meantime. So  
24 you have a number of options in front of you, instead of  
25 actual regulatory text.

1           If you do decide to go and get a rule-making, we  
2 will have to come back to you with that text in order to  
3 move on.

4           So the options in front of you --

5           BOARD MEMBER MEDINA: Is there a resolution?

6           BOARD MEMBER EATON: No, there is no resolution.

7           MR. HOLMES: No resolution at this time. Just  
8 looking for your direction tonight. We have five options,  
9 number 1, 2, 3A, 3B, 3C. They're summarized for you on  
10 the screen, and on page 20-2 of the staff report. None of  
11 these options are a prerequisite for the other. You can  
12 choose any one of these that you'd like. The staff  
13 recommendation is a combination of 2 and 3A.

14           And I would just briefly go through each of the  
15 options, unless you prefer me not to, given the hour.

16           CHAIRPERSON MOULTON-PATTERSON: Does anyone need  
17 them to be gone through? I think we --

18           MR. HOLMES: You got them.

19           CHAIRPERSON MOULTON-PATTERSON: -- understand  
20 them. And staff recommendation is Option 2 and 3A?

21           MR. HOLMES: Correct. I'd just like to point  
22 out, we did run this through a work group and they,  
23 essentially, concurred with the staff's recommendation.

24           CHAIRPERSON MOULTON-PATTERSON: Okay. Before  
25 we -- well, staff -- it's late, I'm sorry. If the

1 Board --

2 BOARD MEMBER EATON: If the guy on the left wants  
3 to talk, let him talk.

4 CHAIRPERSON MOULTON-PATTERSON: Right. I did  
5 want to just say, before we got carried away and started  
6 making motions, because it is late and I'll forget this,  
7 Chuck Helget put in a speaker's slip, he did not want to  
8 speak, but he said he supports staff recommendation number  
9 2 and with 3B. Regs need revision but not as and  
10 emergency.

11 And Denise Delmatier, who had to leave, supports  
12 the staff's recommendation of, what was it, 2 and 3A?

13 MR. HOLMES: Correct.

14 CHAIRPERSON MOULTON-PATTERSON: So I'm sorry, Mr.  
15 Eaton, but I just wanted to get those in the record.

16 Mr. Eaton.

17 BOARD MEMBER EATON: I move that we adopt staff's  
18 recommendation to select options number 2 and 3, little a.

19 BOARD MEMBER JONES: I'll second that.

20 CHAIRPERSON MOULTON-PATTERSON: That's okay. We  
21 have a motion by Mr. Eaton, seconded by Mr. Jones to  
22 support the staff's recommendation of 2 and 3A.

23 Please call the roll.

24 MR. HOLMES: May I interrupt just for one second  
25 before we take a vote. There is some additional

1 suboptions that we were seeking direction on from you. If  
2 you go straight to a vote, we'll miss that.

3 CHAIRPERSON MOULTON-PATTERSON: Where are those?  
4 You're going to have to really guide us through that.

5 MR. HOLMES: The screen shows the first level.  
6 One of staff's ideas for the trigger mechanism that would  
7 trigger whether or not the type of waste we're talking  
8 about is regulated on by the Board is the use of the word  
9 putrescible waste. There are some other alternative  
10 trigger mechanisms. A couple of them are on the Board for  
11 you.

12 One would be to use the existing for team  
13 definition of putrescible waste. The second would be to  
14 tighten that by excluding some additional materials that  
15 are slow to decompose like logs and things of that nature,  
16 which we wouldn't want to bring into this regulated group.

17 The third would be to include and LEA  
18 verification of a nuisance, that is the LEA would actually  
19 have to verify actual nuisance.

20 The other broader option is to go with a  
21 definition and rework a definition of food waste, which we  
22 are not proposing because it's a very big task and it's  
23 something too difficult to get our hands around. Is there  
24 any specific input on those issues?

25 CHAIRPERSON MOULTON-PATTERSON: Mr. Jones.

1                   BOARD MEMBER JONES: Thanks, Madam Chair. I  
2 think green waste is putrescible, but we have a whole tier  
3 of regulations in place on how to do green waste  
4 composting. This issue came up because a term was used  
5 called commingled or organics. And if you look at the  
6 waste stream, the waste stream can all be considered  
7 commingled organics, with the exception of some inerts.

8                   And what triggered our issue here was the fact  
9 that it was food waste. And through the transfer station  
10 regs, when we talked about those issues, we said while we  
11 never got it into statute, we all agreed that it was the  
12 food waste that was the issue.

13                  And I would like to see it limited to addressing  
14 the food waste component, because I think it puts  
15 composters of green waste that are already in a regulatory  
16 tier in some kind of a problem. And there may be some  
17 scraps of food waste that are commingled with a load of  
18 green material, and that's not the issue as I see it. It  
19 was the issue when we started categorizing as commingled  
20 organics where everybody got nervous.

21                  So does it makes sense to say -- I think the  
22 definition of putrescible waste is just too broad, because  
23 all of this stuff is putrescible or and awful lot of it  
24 that's already in the tiers, right.

25                  So if we figured out how to carve out that term,



1 that it would be -- or maybe we say putrescible, but it  
2 excludes green waste. And we understand that that little  
3 bit of food waste where the green waste stream still could  
4 be within the ten percent residual, right, so that  
5 shouldn't create a conflict. I'd go for a limited  
6 definition.

7 MR. HOLMES: I think we're in agreement  
8 conceptually. We want to tighten it and we want to be  
9 specific about it so we know everyone's clear in what  
10 we're dealing with. I think the problem we've had with  
11 the use of the term food waste is that it also is very  
12 broad and it could be preconsumer, post-consumer, it could  
13 be kitchen scraps. It can be a number of different things  
14 and so we want to go in with a tight definition.

15 BOARD MEMBER JONES: So if we say putrescible and  
16 then we say excluding green waste, does that --

17 MR. HOLMES: That's consistent with the bullet  
18 number 2, green waste, you know, logs being the easy  
19 answer there. Green waste is getting closer to something  
20 that might break down rapidly.

21 BOARD MEMBER JONES: Right, but we've already got  
22 a set of tiers for that green waste.

23 MR. HOLMES: If it's being composted.

24 BOARD MEMBER JONES: If it's being composted.

25 MR. HOLMES: Yes.

1                   STAFF COUNSEL BLOCK: Just to clarify and that's  
2 the issue that Bob is raising is that even under the  
3 proposed revisions to the compost regs that you'll be  
4 seeing next month, right now the current regulations, the  
5 storage -- green waste needs to be stored at least seven  
6 days before those regulations kick in, being that it  
7 starts to compost.

8                   The proposed regulations are dropping that time  
9 period down to 48 hours, I believe, is where it's at right  
10 now, taking into account the fact that typically it's been  
11 sitting somewhere before it actually leaves the facility  
12 as well. The facility that you dealt with, the Cal  
13 Biomass facility, that material was moving through that  
14 facility in 24 to 48 hours.

15                  So it would never have been caught by the compost  
16 regs as written or as they're currently proposed to be  
17 dealt with. And that's why we're looking at -- because  
18 it's not there long enough to start composting.

19                  BOARD MEMBER JONES: Right. That's why we said  
20 we needed the transfer station, because of the health and  
21 safety issues. Can we give further definition in this  
22 thing as we go through this process?

23                  MR. HOLMES: Absolutely.

24                  DEPUTY DIRECTOR NAUMAN: We're under no time  
25 constraints. We're just trying to stay consistent with

1 our rule-making calendar, but you can give us initial  
2 direction now and then we can come back for further  
3 direction.

4 MR. HOLMES: Correct, but if we are going with an  
5 emergency package, the next step will be to bring you  
6 draft language. And so that's why we're asking, at least,  
7 for a little bit of direction so we know, you know, have a  
8 starting point for that language.

9 BOARD MEMBER PAPARIAN: Is there any reason why  
10 we can't just tweak a definition in the composting regs  
11 that are coming next month?

12 STAFF COUNSEL BLOCK: These types of facilities  
13 as we were talking about really would not -- well, it is  
14 one of the options you have.

15 BOARD MEMBER PAPARIAN: I mean, can you say in  
16 the composting regs, these regs exclude this sort of, you  
17 know, this sort of activity. If you did that, then they  
18 would fall into the solid waste facility regulations.

19 STAFF COUNSEL BLOCK: That's correct. I mean,  
20 they're not covered by the composting regs. And as those  
21 regs are being drafted, they won't be covered by the  
22 composting regs.

23 The question becomes if green waste is not  
24 included in putrescible waste for this definition, green  
25 waste that's at a facility for only, let's say, 24 hours.

1 And then because it's only 24 hours at the facility, it's  
2 also not in compost, it may be nowhere. So that's the  
3 issue that we're grappling with is where you want that to  
4 fall at all.

5 That's why the proposal or the agenda item talks  
6 in terms of laws and branches which we believe there's not  
7 going to be a lot of concern about that. The bigger  
8 issue, which isn't mentioned here, would be yard  
9 trimmings, which is typically viewed as putrescible. It  
10 does decompose fairly rapidly, but it's not food waste at  
11 the type you were looking at at Cal biomass where, you  
12 know, we're looking for direction where the Board would  
13 want those to fall.

14 Do you want those counted as putrescible wastes  
15 in this context or not?

16 BOARD MEMBER JONES: No.

17 BOARD MEMBER PAPARIAN: I think I agree on the no  
18 on that one. But let me ask one other thing. I'm all  
19 confused why we would need legislation in this area. It  
20 seems like this is more regulatory stuff.

21 STAFF COUNSEL BLOCK: Actually, thank you for  
22 asking that question. I was thinking about this coming up  
23 as the discussion was going on in the last agenda item.  
24 If you look in the agenda item itself under option 2, we  
25 do talk in terms of -- it's on page 20-3, it's the

1 paragraph labeled number two.

2           Staff is not proposing a legislative change,  
3 because it's required to be the regulations. However,  
4 this is -- you may have gathered over at least the last  
5 six, seven, eight years has been a fairly contentious  
6 issue in terms of the two-part test, what constitutes  
7 recycling and what doesn't.

8           And so our thought was that since the statute  
9 itself doesn't reference putrescible one way or the other  
10 that we would look at doing both things, both changing the  
11 statute just for purposes of clarity so we don't have this  
12 argument going on. And just to give you some context, I  
13 mean, we've been having this discussion -- gosh, we  
14 started working on the two-part test in '94. And I've  
15 been through this about three or four different times. It  
16 keeps coming up.

17           So for purposes of just kind of ending the debate  
18 really, if you will, that's what that option is in there  
19 for, but separate from that, based on the Board's decision  
20 and Cal Biomass hearing, you know, the Board's position as  
21 well was we have the authority, regulatory to change this,  
22 so that's why it's phrased in terms of you can do either 2  
23 or 3A. We're suggesting let's do both just to take care  
24 of it all at once, since there also does seem to be some  
25 consensus among various parties now that putrescible

1 shouldn't be allowed under that exception in the statute.

2 So we thought we'd just nail this down.

3 BOARD MEMBER ROBERTI: Does material always have  
4 to be putrescible or at some point does it have to then  
5 demonstrate a degree of being putrid?

6 (Laughter.)

7 BOARD MEMBER JONES: You'll get there at some  
8 point.

9 BOARD MEMBER ROBERTI: I'm quasi-serious.

10 STAFF COUNSEL BLOCK: That is the option that's  
11 the third bullet on the screen, talks in terms of  
12 verification and nuisance was to get at that idea that  
13 rather putrescible it's -- as much as you define it,  
14 there's a certain amount of subjectivity.

15 BOARD MEMBER ROBERTI: There's frogs, I was told,  
16 they're putrescible, but they're always putrescible. I  
17 mean, they never become putrid.

18 (Laughter.)

19 MR. HOLMES: Disposable.

20 STAFF COUNSEL BLOCK: I don't think that's  
21 actually possible.

22 BOARD MEMBER ROBERTI: Well, there are some wood  
23 wastes.

24 STAFF COUNSEL BLOCK: Right. It would take a  
25 very long time.

1 BOARD MEMBER ROBERTI: I'm positive.

2 BOARD MEMBER JONES: No, you're right.

3 BOARD MEMBER ROBERTI: I was briefed at one time  
4 or another, so that's my question.

5 STAFF COUNSEL BLOCK: That's correct. There are  
6 some green wastes that would take a very long time to  
7 decompose, although they're still considered putrescible.  
8 And that was staff's recommendation in terms of the -- or  
9 question about excluding logs, branches, other materials  
10 that are putrescible but would otherwise take a long time.

11 MR. HOLMES: We're just asking if you want to add  
12 that criteria. You know, actually both of those items  
13 combined, it's either we can try to define it and list  
14 those types of materials or we can put some type of  
15 performance standard or verification by the LEA.

16 BOARD MEMBER ROBERTI: Yeah. I think we should  
17 have some verification. There should be some verification  
18 standard, because I mean otherwise putrescible is just  
19 almost everything. Rubber is putrescible after a thousand  
20 years.

21 STAFF COUNSEL BLOCK: Actually, what you've  
22 suggested is not actually like what I think staff has put  
23 on the third bullet, which was more of an actual -- in  
24 other words, it wouldn't be putrescible unless there was  
25 and become putrid, if you will. And that's a little bit

1 more less of a definition and more of a performand

2 standard.

3 BOARD MEMBER JONES: And these are the triggers  
4 for the transfers. You know, part of it, right, Bob?

5 MR. HOLMES: I'm sorry, would you restate that?

6 BOARD MEMBER JONES: These are the triggers for  
7 the transfer part of that operation not the composting  
8 regs?

9 MR. HOLMES: Correct.

10 BOARD MEMBER JONES: And so all we're trying to  
11 do is say if you've got a waste stream coming in that's  
12 food waste, going into a facility, it is not outside of  
13 the regulatory tier. It is not outside of LEA's purview  
14 to come in and inspect, so we're going to bring that --  
15 we're going to tighten that up and we are saying  
16 putrescible is the appropriate definition but exclude  
17 logs -- or exclude the green waste segment of that.

18 MR. HOLMES: Thank you. That's correct.

19 BOARD MEMBER JONES: Will that work okay?

20 BOARD MEMBER ROBERTI: So we're coming up with a  
21 tighter definition?

22 BOARD MEMBER JONES: Yes.

23 BOARD MEMBER ROBERTI: Are you proposing Steve  
24 Jones or staff proposing that we issue -- I mean material  
25 by material or just --



1 BOARD MEMBER JONES: No, category.

2 BOARD MEMBER ROBERTI: I agree, because I tend to  
3 think the word putrescible, which I first learned when I  
4 came on the Board, really everything that could decompose  
5 over a period of a thousand years is putrescible.

6 CHAIRPERSON MOULTON-PATTERSON: I hate to  
7 interrupt, are we ready to vote, because Mr. Peters, our  
8 court reporter, needs a break.

9 BOARD MEMBER JONES: Sure.

10 CHAIRPERSON MOULTON-PATTERSON: We had a motion  
11 by Mr. Eaton, seconded by Mr. Jones for the staff  
12 recommendation of -- yes?

13 MR. HOLMES: I'm sorry, again, there was one  
14 other area that --

15 CHAIRPERSON MOULTON-PATTERSON: Well, then we  
16 need to take a break, because he needs a break.

17 I'm sorry.

18 (Thereupon a brief recess was taken.)

19 CHAIRPERSON MOULTON-PATTERSON: I'd like to call  
20 the meeting back to order, please.

21 Okay, any ex partes?

22 BOARD MEMBER EATON: None.

23 CHAIRPERSON MOULTON-PATTERSON: I said hello to  
24 Terry Leveille.

25 Mr. Paparian?

1 BOARD MEMBER PAPARIAN: No.

2 CHAIRPERSON MOULTON-PATTERSON: Senator Roberti?

3 BOARD MEMBER ROBERTI: No.

4 CHAIRPERSON MOULTON-PATTERSON: Okay. We're  
5 going to get started in just a moment. You needed some  
6 further clarification, and Mr. Jones is on his way back  
7 in.

8 Sorry. Or did somebody else want to give the  
9 direction?

10 BOARD MEMBER ROBERTI: I just want to get some  
11 cold air.

12 MR DUNN: Are you going to open the roll on this  
13 one? There's already a motion and a second.

14 CHAIRPERSON MOULTON-PATTERSON: Leave open the  
15 roll.

16 BOARD MEMBER EATON: Madam Chair, before we get  
17 started, we were just kind of talking at the break, staff  
18 and myself. Perhaps one of the ways we can cut short time  
19 not going back and rehashing the Item 21, which was, I  
20 believe, the long-term gas violation, but now staff has  
21 sufficient direction to be able to prepare a draft  
22 response to the Auditor's report for our February 7th  
23 meeting, based upon --

24 CHAIRPERSON MOULTON-PATTERSON: So you're all  
25 ready. Turn in the transcript.

1                   Okay, Mr. Jones, we were depending on you to give  
2     some direction on this.

3                   BOARD MEMBER JONES:   The other item that Bob  
4     needed definition is on 20-5 "'Limited' emergency revision  
5     of current Transfer/Processing..." One of the bullets  
6     says "Define all putrescible waste" -- oh, wait. "...as  
7     residual, which would effectively allow as much as ten  
8     percent of incoming material to be putrescible waste."

9                   What that does is source separate loads that come  
10    in that are green waste into a composting facility. If  
11    there is less than ten percent residual it meets the  
12    two-part test. If it's over that, then it needs to fall  
13    into a permit tier.

14                  So I would suggest that in having -- ex partes,  
15    by the way, I had some discussions with Sean and others  
16    about some of the issues that were in front of us as we  
17    were talking about Bob and Elliot about that.

18                  BOARD MEMBER EATON:   Is that Sean Edgar or was  
19    that Sean Puffy Colmes?

20                  (Laughter.)

21                  BOARD MEMBER JONES:   Sean Edgar. Sean Puffy  
22    Edgar.

23                  (Laughter.)

24                  BOARD MEMBER JONES:   And Elliot as well thinks  
25    that that keeps us consistent with our two-part test. And

1 I'm assuming others think that that keeps it consistent.

2 So our direction or I think our direction should be up to

3 ten percent.

4 CHAIRPERSON MOULTON-PATTERSON: You don't hear  
5 any disagreement.

6 MR. HOLMES: Okay, that's all we need.

7 CHAIRPERSON MOULTON-PATTERSON: Thank you. And  
8 motion by Mr. Eaton seconded by Mr. Jones for the staff  
9 recommendation, I believe it was number 2 and 3A.

10 Please call the roll and we're going to leave the  
11 roll open for Senator Roberti.

12 SECRETARY VILLA: Eaton?

13 BOARD MEMBER EATON: Aye.

14 SECRETARY VILLA: Jones?

15 BOARD MEMBER JONES: Aye.

16 SECRETARY VILLA: Medina?

17 BOARD MEMBER MEDINA: Aye.

18 SECRETARY VILLA: Paparian?

19 BOARD MEMBER PAPARIAN: Aye.

20 SECRETARY VILLA: Moulton-Patterson?

21 CHAIRPERSON MOULTON-PATTERSON: Aye.

22 Okay, now we're going to 22.

23 DEPUTY DIRECTOR NAUMAN: Okay. Item 22 is  
24 consideration of a report to the Governor and the  
25 Legislature on the farm and ranch solid waste cleanup and

1 abatement grant program.

2           You have a revised agenda item. And I believe  
3 copies in the back. And Scott is going to make a very  
4 brief presentation.

5           MR. WALKER: Madam Chair, members of the Board,  
6 again, this item presents consideration of approval of the  
7 report to the Legislature on the farm and ranch solid  
8 waste cleanup and abatement grant program.

9           This program was enacted in October of 1997 under  
10 Senate Bill 1330, lockyer. Basically, it's to setup a  
11 program, a grant program, for cleanup of small illegal  
12 disposal sites on farm or ranch property where there is no  
13 responsible party, grant programs up to \$10,000 per site,  
14 \$50,000 per city or county per year.

15           The statute requires the Board to report to the  
16 Governor and the Legislature by January of 2001 on costs  
17 and effectiveness of the program. And the purpose of this  
18 item is to consider approval of the proposed report. The  
19 Board's legislative office has provided the notice that  
20 the report is pending Board approval.

21           Essentially, the report concludes that the  
22 program has had a significant beneficial effect on cleanup  
23 of rural sites. The Board has approved 72 sites for  
24 cleanup. And as of November 1st, 23 of the sites have  
25 been cleaned up and 49 were in progress.

1           The Board, as required by statute, has completed  
2 the rule-making process to implement the program. We've  
3 put considerable resources into outreach and we are  
4 currently working with local jurisdictions to select  
5 eligible sites and complete grant applications.

6           The numbers of jurisdictions receiving grants and  
7 the amounts awarded have grown significantly from year to  
8 year. Eleven jurisdictions are projected to be approved  
9 for grants or to be considered for approval for grants in  
10 the current fiscal year totaling about \$500,000.

11           By comparison \$110,280 was approved for grants in  
12 fiscal year 98/99, \$219,984 was approved in fiscal year  
13 99/2000.

14           As stated, the change that Ms. Nauman referred to  
15 was specifically regarding provisions in the tire bill,  
16 Senate Bill 876. And essentially what we're going to try  
17 to do here is since the Board and the tire bill envisioned  
18 cleaning up more tire sites, and we're still desirous of  
19 cleaning up more farm and ranch sites is that the tire  
20 portion of the farm and ranch site we're going to work  
21 with the tire program to combine essentially a tire grant  
22 with a farm and ranch grant.

23           And we anticipate that this will help cleanup  
24 additional tires and also farm and ranch sites. So we're  
25 going to be working with the tire program on this as they

1 bring forth the five-year plan.

2           The program is still new, and it's had only one  
3 full fiscal year of operation. The next few years will  
4 provide more comprehensive information about viability of  
5 the program. Therefore, the proposed report recommends  
6 that the program continue to be implemented. And after  
7 another year of operation, fiscal year 2000/2001, we  
8 evaluate the program annually with stakeholder input to  
9 determine its effectiveness.

10           In conclusion, staff recommends adoption of  
11 Resolution 2001-30, approving the report to the  
12 Legislature on the farm and ranch solid waste cleanup and  
13 abatement grant program.

14           CHAIRPERSON MOULTON-PATTERSON: Okay. Any  
15 questions?

16           We have a speaker.

17           Terry Leveille.

18           MR. LEVEILLE: Madam Chair and Board, Terry  
19 Leveille representing California Tire Dealers south and  
20 north.

21           We have an abiding interest in this program. We  
22 like staff's report on this program. We've always had a  
23 little bit of a concern since it is funded with a million  
24 dollar stipend, and a third of that comes out of tire  
25 fund. Accordingly, we've watched the progress and seen

1 that very few tires, compared to trash and other types of  
2 refuse, have been cleaned up.

3           We like the idea of enhancing the program,  
4 though, by working with a separate grant program from the  
5 tire fund. But at the same time, we believe that the  
6 million dollars that are authorized by the statute should  
7 come from, not the tire fund anymore, but should come from  
8 the Integrated Waste Management account and the used oil  
9 account. Rather than the three, we'd like to see that  
10 come from the two, because that's going to be basically  
11 cleaning up the garbage.

12           The tire fund, on the other hand, should be  
13 supporting a grant program for cleaning up those tires,  
14 and an enhanced grant. And we think this will actually  
15 improve the activities of the farm and ranch program,  
16 because it will allow for more funds to be expended on the  
17 various projects.

18           CHAIRPERSON MOULTON-PATTERSON: Any comments?

19           MR. WALKER: No. I just wanted to add, the  
20 projects approved to date would clean up about 10,000  
21 tires. That's, you know, we referred to the number of  
22 tires so far.

23           CHAIRPERSON MOULTON-PATTERSON: How many?

24           MR. WALKER: Ten thousand tires is the estimate.

25           BOARD MEMBER PAPARIAN: Madam Chair, just a quick



1 thing. I talked to staff about this privately a few days  
2 ago, but I'd like to see, perhaps, a little more energy  
3 into the publicity of this program, perhaps working with  
4 rural legislators, farm publications and other means to  
5 better publicize the availability of these funds, in the  
6 hope that we boost the participation in the program.

7           If there was some way to maybe come back in two or  
8 three months and see if there's any potential there, maybe  
9 we can get a brief report on enhanced publicity, I'd  
10 appreciate it.

11           MR. WALKER: Staff would be happy to do that. In  
12 fact, we anticipate bringing forth some grants for your  
13 consideration in a couple months. And, at that time, we  
14 could report on some of the enhanced stakeholder outreach.

15           CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr.  
16 Paparian.

17           Okay.

18           BOARD MEMBER JONES: Madam Chair.

19           CHAIRPERSON MOULTON-PATTERSON: Mr. Jones.

20           BOARD MEMBER JONES: I want to just quickly  
21 respond to one of Terry's issues. One of the Board of  
22 supervisors for San Joaquin County, when they were looking  
23 at the coal cogen plant down in Stockton and the use of  
24 tires, made a comment to Karen Tergovoich and myself when  
25 we were sitting there talking to him, that as a farmer it

1 costs him -- he usually makes ten loads a year to the  
2 dumps, at a approximately, I think he said, somewhere  
3 around anywhere from \$20 to \$80 a load, and it was all  
4 tires.

5               So I think there's a mix, Terry. I know what  
6 your people are after, but there's a mix of this waste.  
7 And tires on farm land attract more tires. And while they  
8 may be too small for a grant program, this really does  
9 take care of a lot of tires. And I think you're right,  
10 we've got to continue to look at it and make sure that  
11 it's proportionate.

12              MR. LEVEILLE: We want to enhance the program by  
13 working with a grant program along side the farm and  
14 ranch, so that rather than \$10,000 they can go \$20,000 or  
15 \$30,000, and that 20 or 30 coming out of the tire fund.  
16 At the same time, we feel that that money in the farm and  
17 ranch program that comes from the tire fund should be in  
18 that grant program, not in the farm and ranch program.

19              BOARD MEMBER JONES: If we ever get an approved  
20 tire plan then we can address that issue.

21              MR. LEVEILLE: Thank you.

22              BOARD MEMBER JONES: Madam Chair, I want to move  
23 adoption of Resolution 2001-30, consideration of report to  
24 the Governor and Legislature on the farm and ranch solid  
25 waste cleanup and abatement grant program.

1 BOARD MEMBER MEDINA: Second.

2 CHAIRPERSON MOULTON-PATTERSON: Motion by Mr.

3 Jones seconded by Mr. Medina.

4 Please call the roll.

5 BOARD MEMBER EATON: Aye.

6 (Laughter.)

7 SECRETARY VILLA: Eaton?

8 BOARD MEMBER EATON: Aye.

9 SECRETARY VILLA: Jones?

10 BOARD MEMBER JONES: Aye.

11 SECRETARY VILLA: Medina?

12 BOARD MEMBER MEDINA: Aye.

13 SECRETARY VILLA: Paparian?

14 BOARD MEMBER PAPARIAN: Aye.

15 SECRETARY VILLA: Roberti?

16 BOARD MEMBER ROBERTI: Aye.

17 SECRETARY VILLA: Moulton-Patterson?

18 CHAIRPERSON MOULTON-PATTERSON: Aye.

19 And we left the roll open for was it 20?

20 SECRETARY VILLA: Twenty.

21 CHAIRPERSON MOULTON-PATTERSON: For Senator

22 Roberti.

23 SECRETARY VILLA: Roberti?

24 BOARD MEMBER ROBERTI: Aye.

25 CHAIRPERSON MOULTON-PATTERSON: Yeah.

1               DEPUTY DIRECTOR NAUMAN: I believe this takes us  
2 back to Item 4.

3               Board members, you'll remember last evening you  
4 took action on Item number 4, which was consideration of  
5 approval of facility compliance loans. And, at that time,  
6 you made some funding decisions and we have drafted a  
7 revised resolution to reflect those decisions.

8               We've passed that out to you. I think there may  
9 be some copies in the back. If you'd look at page two, I  
10 have a couple minor revisions that I'd like to suggest to  
11 you. At the top of the page, there's a typographical  
12 error that we will correct. It says last line, instead of  
13 through a loan program.

14              The substantive change I wanted to add is the  
15 first whereas on that page. The last line reading "...the  
16 portion of the application that would be applied to  
17 closure/post-closure activities." And then I want to  
18 insert, "...which reduces their request to \$33,000," just  
19 so that it's clear throughout the resolution what dollar  
20 amounts you are awarding to which applicants and then  
21 that's reflected in the chart.

22              Before we leave this item, would you mind passing  
23 those out, I also wanted to just come to closure on  
24 another item that I failed to raise last evening, and that  
25 was a request by Mr. Eaton at the December meeting to

1 include within the loan documents some language with  
2 respect to the use of recycled materials.

3           This is a draft that we came up with. And I  
4 believe Mr. Eaton wanted to suggest a couple of areas to  
5 fine tune this, so that it would be clear that the  
6 borrower would have to communicate with Board staff prior  
7 to beginning the project indicating what recycled content  
8 terms, if any, they propose to use for the project. So it  
9 would give staff an opportunity to work with the borrower  
10 to ensure that they were looking at all available options  
11 to use recycled content material, rather than as the  
12 language currently reads certifying, and after the fact,  
13 that they had made that effort.

14           So I think it's a minor change. And if that  
15 meets your intent, Mr. Eaton, we'll make that adjustment  
16 to the language.

17           BOARD MEMBER EATON: The whole idea was is that  
18 the language that you see before you always talked that it  
19 was within the purview of the borrower that related to  
20 products. And subsequently after the project was  
21 completed here, she then could report upon the amount of  
22 recycled content product.

23           Here, the change I would make is that prior to  
24 beginning they were given an initial preview and some of  
25 the paperwork suggested what they hopefully would intend

1 to use if they had problems locating recycled material.  
2 Obviously, we have CalMax. We have all kinds of programs  
3 within our in-house that we could assist them with if they  
4 were having a problem.

5 It also gives us a tracking system as to what  
6 kinds of products may or may not be out there so we don't  
7 unduly burden the borrower where products are not  
8 available for the type of work that they're doing. So  
9 it's just a front-end kind of addition as well.

10 And the other addition that I have to the  
11 resolution is that in a title where it says Resolution  
12 2001-27, we should have revised.

13 DEPUTY DIRECTOR NAUMAN: Yes, you're correct. I  
14 failed to mention that. I had that noted.

15 Thank you.

16 CHAIRPERSON MOULTON-PATTERSON: Thank you.

17 DEPUTY DIRECTOR NAUMAN: So we're ready for a  
18 motion.

19 CHAIRPERSON MOULTON-PATTERSON: Okay.

20 BOARD MEMBER MEDINA: I'll move the resolution.

21 CHAIRPERSON MOULTON-PATTERSON: Okay. Resolution  
22 2000-1 -- you read it.

23 BOARD MEMBER MEDINA: Okay. I move Resolution  
24 2001-28 Revised, consideration of approval of facility  
25 compliance loans.

1               DEPUTY DIRECTOR NAUMAN: Including the  
2 modifications that I stated.

3               BOARD MEMBER MEDINA: Including the modifications  
4 that were stated.

5               CHAIRPERSON MOULTON-PATTERSON: Who seconded it,  
6 Roberti?

7               BOARD MEMBER ROBERTI: Second.

8               CHAIRPERSON MOULTON-PATTERSON: Senator Roberti.  
9 We have a motion by Mr. Medina, seconded by Senator  
10 Roberti.

11              Please call the roll.

12              SECRETARY VILLA: Eaton?

13              BOARD MEMBER EATON: Aye.

14              SECRETARY VILLA: Jones?

15              BOARD MEMBER JONES: Aye.

16              SECRETARY VILLA: Medina?

17              BOARD MEMBER MEDINA: Aye.

18              SECRETARY VILLA: Paparian?

19              BOARD MEMBER PAPARIAN: Aye.

20              SECRETARY VILLA: Roberti?

21              BOARD MEMBER ROBERTI: Aye.

22              SECRETARY VILLA: Moulton-Patterson?

23              CHAIRPERSON MOULTON-PATTERSON: Aye.

24              Ms. Nauman.

25              DEPUTY DIRECTOR NAUMAN: It's been a pleasure,

1 but I've run out of items finally.

2 CHAIRPERSON MOULTON-PATTERSON: Thank you. We've  
3 had quite a day.

4 Okay, we're going to move into special waste.

5 You know, I understand we're in a very severe energy  
6 crisis, but either could we turn up the lights a little or  
7 could people move forward, because it's very disconcerting  
8 not to be able to see people that I'm calling.

9 BOARD MEMBER ROBERTI: If we're lucky we'll have  
10 a blackout.

11 CHAIRPERSON MOULTON-PATTERSON: So if you  
12 wouldn't mind moving forward or turning up the lights, one  
13 or the other. Thank you. That's fine.

14 BOARD MEMBER JONES: Todd, you're still back  
15 there, okay.

16 (Laughter.)

17 CHAIRPERSON MOULTON-PATTERSON: Okay. Mr. Leary,  
18 number 23, is that the way you wish to start?

19 DEPUTY DIRECTOR LEARY: Yes, please. Good  
20 evening, Madam Chair and members of the Board. Mark Leary  
21 representing the Special Waste Division.

22 Agenda item 23, is the consideration of staff  
23 recommendations for improving waste based management in  
24 California. Anna Ward of the Special Waste Division will  
25 make the presentation.



1                   MS. WARD: Good evening. At the August 2000  
2 Board meeting, staff presented background information and  
3 findings from research and waste paint task force  
4 meetings. Numerous options formulated to address the  
5 waste paint management problem were also presented. The  
6 Board directed staff to continue researching the highest  
7 options for improving waste paint management and to return  
8 with recommended actions.

9                   The Board also asked staff to further research  
10 the efficacy of voluntary versus mandatory latex paint  
11 take back programs and to investigate the development of a  
12 standard for household hazardous waste collection programs  
13 and a uniform public outreach program.

14                  We come before you this evening to present  
15 staff's recommendations as well as to address the other  
16 questions. In the last year, staff has met with industry,  
17 local government, other State agencies and environmental  
18 organizations to discuss this subject.

19                  In addition, staff investigated other issues  
20 surrounding the best way to manage waste paint and provide  
21 financial relief to local government for their paint  
22 programs. Staff has concluded that the best mechanism to  
23 provide the most cost effective and practical solution to  
24 managing waste paint in California is described in Option  
25 1. There are three actions. The first action is to

1 develop a waste paint management program supported by a  
2 fee on the sale of architectural coatings.

3 The second is to add enforcement provisions to  
4 the State agency buy recycled campaign program.

5 And the third action is to enhance green  
6 procurement requirements for local government and other  
7 program participants. Staff asks the Board to consider  
8 directing staff to develop legislative proposals for a fee  
9 supported waste paint management program and for improving  
10 the State agency buy recycled program.

11 The actions would address the cost of local  
12 government paint management due to the increasing amount  
13 of paint collected as well as the rising costs to manage  
14 it. It addresses the diminishing service to the public  
15 due to strained local government budgets to operate  
16 household hazardous waste programs. It addresses the  
17 recycled paint market that needs enhancement, and will  
18 help to address the continuing illegal disposal of paint  
19 at landfills, transfer stations and other sites across the  
20 State.

21 As has been mentioned in previous items, waste  
22 paint collected by local government is increasing at over  
23 20 percent annually. It represents over 42 percent of all  
24 household hazardous wastes collected and amounts to over  
25 one-third of local household hazardous waste management

1 costs each year.

2 I will first discuss the waste paint management  
3 fee concept. The extent of financial relief for local  
4 government depends upon the amount of funding provided.  
5 To fully reimburse the \$9 million that local government  
6 paid for paint collection and management in 98/99, a fee  
7 of only 15 cents per gallon would be needed. This is one  
8 percent of the average \$15 per gallon of paint sales  
9 price.

10 A 15 cent per gallon fee on architectural paint  
11 would provide for limited growth in participation rates  
12 like increasing the frequency of temporary events and the  
13 number of operating hours of collection facilities.

14 A higher fee of 25 cents per gallon would provide  
15 for about three years of growth in volumes and costs.  
16 During the first years' revenues could be disbursed as  
17 grants to begin or expand waste paint collection or to  
18 conduct public outreach. This would require more  
19 administrative effort and cost.

20 Some monies should also be made available to the  
21 State to provide educational outreach. A 30 sent per  
22 gallon fee would include all of the just mentioned and  
23 also support a reasonable incentive for manufacturers who  
24 choose to collect and process latex paint.

25 A payment system could be established based upon

1 the number of gallons collected from the public similar to  
2 the AB 2020 bottle bill program.

3 In response to industry's opinion that a fee on  
4 the sale of paint would be burdensome to them, staff  
5 proposes that there are ways to address this concern. For  
6 example, one would be to allow fee payers to keep a  
7 percentage of the fee collected to assist them with their  
8 administrative effort. This is done in the tire fee  
9 system.

10 Two would be to allow manufacturers that directly  
11 support the recycling of waste paint to not have to remit  
12 the fee to the State.

13 And three, yet another incentive, would be that  
14 stores that take back latex paint could claim and  
15 incentive from the Board similar to the used oil certified  
16 center system. Attachment one outlines the proposed  
17 elements of the waste paint management program.

18 I will now address the second action of option 1,  
19 the State agency procurement enhancement. A stronger  
20 market for recycled paints would provide more revenue to  
21 processors and lower recycling costs to help use household  
22 hazardous waste programs. Legislation to add an  
23 enforcement mechanism to the State agency buy recycled  
24 campaign would provide significant support to the markets  
25 for recycled paint along with other recycled content

1 products.

2           Staff proposes to provide compliance assistance  
3 and development of a status list to be published annually  
4 of which agency is or is not purchasing recycling  
5 products. Attachment 2 outlines the details of this  
6 concept. And staff from the program are also here this  
7 evening to answer any questions you may have.

8           I will now mention the third action of Option 1,  
9 the Board should further encourage local government  
10 procurement. Grant evaluation criteria could provide  
11 points for local government to purchase recycled latex  
12 paint. This could include used oil and household  
13 hazardous waste grant applications as well as other Board  
14 grants.

15           The Board asked staff to further examine latex  
16 paint take back programs. This is where unwanted paint  
17 can be collected from the public at retail stores and the  
18 collector would be responsible for managing and shipping  
19 the paint off for recycling. Industry has indicated that  
20 they will only support this method if it is done on a  
21 voluntary basis.

22           Staff agrees that to place a mandate on industry  
23 is not desirable. California local governments have many  
24 years of experience and expertise in managing waste paint  
25 and marketing recycled paint. Local government household

1 hazardous waste collection infrastructure is in place to  
2 take that paint whereas an industry sponsored take back  
3 would be even more expensive to initiate and maintain.

4 Kelly Moore is the only paint company in  
5 California that is currently taking back paint for  
6 recycling. And because, as I say, it is inconvenient and  
7 expensive, they only collect and reprocess paint at one  
8 location.

9 At industry's request, staff is working with the  
10 Department of Toxic Substances Control and paint task  
11 force members to produce a fact sheet as a guide for  
12 additional industry and retail stores to implement take  
13 back programs.

14 At previous Board meetings, I have mentioned  
15 various public/private paint collection collaborations. I  
16 had passed out a summary of programs to you for reference  
17 prior to this Board meeting today. And, actually, I put a  
18 number of the summaries on the back table. And I know  
19 that you've all seen this. If you need anymore, we have  
20 some.

21 BOARD MEMBER ROBERTI: Madam Chair?

22 CHAIRPERSON MOULTON-PATTERSON: Senator Roberti.

23 MS. WARD: Okay. All of these programs are run  
24 with local or State financial support. All except for the  
25 British Columbia program, which is industry run and costs

1 the residents of that province over \$2 per gallon at point  
2 of sale.

3 Unless and extensive effort is made a paint take  
4 back by retailers is highly unlikely to provide the  
5 financial relief to any local government.

6 I will now mention household hazardous waste  
7 collection services availability to the State. A review  
8 of the level of collection service statewide revealed that  
9 a significant infrastructure is in place. In fiscal year  
10 98/99, there were 85 permanent household hazardous waste  
11 collection facilities, 245 temporary facilities or one-day  
12 events and 107 permanent recycle-only facilities.

13 About 50 percent of the State's population has  
14 access to permanent facilities. About 40 percent of the  
15 state has access to temporary and recycle only facilities,  
16 and about ten percent of the State do not have access to  
17 any collection opportunities.

18 The collection facilities, however, are not  
19 sufficient to meet the needs of residents because of  
20 limited operating days and hours, distance to facilities  
21 and the timing of temporary programs where there are only  
22 one or two events a year in any given area.

23 The limited accessibility is one reason for low  
24 resident participation. Because of this, statewide  
25 education or public outreach endeavors could prove to be

1 counter productive at this time as most programs cannot  
2 afford more residents to use the existing facilities.

3           Staff still does encourage local governments,  
4 however, to encourage their residents to give away  
5 leftovers and purchase what they need as to complement the  
6 programs that they do have.

7           The Board also still distributes household  
8 hazardous waste and paint fact sheets for local  
9 government's use.

10           In conclusion, enhancing the State agency  
11 procurement and continuing to provide points for green  
12 procurement is only part of the solution to providing  
13 financial relief to local government programs. Action one  
14 to develop a waste paint management program through the  
15 existing household hazardous waste program infrastructure  
16 supported by a fee on paint sold would complete the means  
17 for the State to provide a permanent solution for local  
18 government and to provide the significant financial relief  
19 they urgently need.

20           It is an equitable mechanism to all parties  
21 concerned with consumers, industry, local government and  
22 State government playing a part in product stewardship.  
23 We ask that you support all actions and option 1 by  
24 adopting Resolution 2001-23.

25           Thank you.



1                   CHAIRPERSON MOULTON-PATTERSON: Thank you, Ms.

2 Ward.

3                   Senator Roberti.

4                   BOARD MEMBER ROBERTI: Yeah. First I want to  
5 thank staff for putting together a fine proposal. I would  
6 like to mention that this past November, the voters  
7 surprised us in sort of indicating support for  
8 environmental fees.

9                   And with that in mind, I think this proposal is  
10 timely and important to clean up the proliferation of  
11 household paint. So I would like to move Resolution  
12 2001-23.

13                  CHAIRPERSON MOULTON-PATTERSON: Okay.

14                  BOARD MEMBER MEDINA: Second.

15                  CHAIRPERSON MOULTON-PATTERSON: And we have a  
16 motion and a second. We do have speakers that we'll hear  
17 before we vote.

18                  BOARD MEMBER ROBERTI: Absolutely, but I always  
19 like to make the motion first.

20                  BOARD MEMBER EATON: He likes to paint a broad  
21 brush with his motions.

22                  CHAIRPERSON MOULTON-PATTERSON: Okay. So we do  
23 have a motion. And we'll go ahead and hear.

24                  Sharon Dowell.

25                  BOARD MEMBER EATON: I just have one question.

1 On attachment number 2, where I think the intent is to try  
2 and incorporate it into our existing State statutes for --  
3 is this for our public procurement statute?

4 MS. WARD: We have still Bill Orr from that  
5 Program.

6 BOARD MEMBER EATON: I know what you're trying to  
7 get at. What I'm wondering is is this the language you're  
8 going to use or are we just saying that the legislative  
9 proposal would include that all of our own State  
10 procurement include these types of provisions that are  
11 included in others. It's unclear. I think that's what  
12 you're trying to get at. And if it is, that language  
13 would be changed because there is no private entity,  
14 correct?

15 MR. ORR: Yeah, this is Bill Orr with the  
16 recycling technologies branch. Basically, what we have  
17 here is that we actually have three different minimum  
18 content programs where we would like to see uniform  
19 enforcement provisions in all of them. And this specific  
20 instance --

21 BOARD MEMBER EATON: Enforcement against whom?

22 MR. ORR: Excuse me?

23 BOARD MEMBER EATON: Against whom?

24 MR. ORR: One of them is the recycled news print  
25 program. The second one is the trash back certification

1 program, and the third one is the State agency buy  
2 recycled program.

3 And there's different enforcement provisions in  
4 different laws. And so what we would be looking at is for  
5 the State agency buy recycled one having the full suite of  
6 enforcement, which would include the publication of the  
7 list and the other remedies that are mentioned here. So  
8 in this particular instance it would be for the State  
9 agency buy recycled campaign to have the full suite of  
10 enforcement provisions that are in Attachment 2.

11 BOARD MEMBER EATON: All I'm asking is -- and I  
12 think it's a good idea. Are we requesting that State  
13 agencies that they must buy recycled paint?

14 MR. ORR: Yeah. It's already part of the 11  
15 product categories that --

16 BOARD MEMBER EATON: That's what I thought. So  
17 this would be just adding enforcement.

18 MR. ORR: This would be the enforcement  
19 provisions, yes.

20 BOARD MEMBER EATON: It was unclear because you  
21 started talking about private entities. So that's not the  
22 language that would be cleared up.

23 MR. ORR: Right.

24 CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr.  
25 Orr.

1                   Okay, Sharon Dowell.

2                   MS. DOWELL: Madam Chair and members of the  
3 Board, my name is Sharon Dowell and I'm the household  
4 hazardous waste program manager for Santa Clara County.  
5 I'm here tonight to support the staff recommendations for  
6 paint management.

7                   I believe that funding is the key element for a  
8 successful program. In the last four years, the amount of  
9 paint collected by California programs has more than  
10 doubled. Our household hazardous waste budgets have not  
11 kept up.

12                  Paint management isn't solely the responsibility  
13 of government. I believe that the producers and consumers  
14 of paint should share in the costs of management. They  
15 are the ones that can most effectively make the changes in  
16 the materials management system through their decisions in  
17 manufacturing and purchase.

18                  Industry representatives have indicated in task  
19 force meetings that they prefer a voluntary program. And  
20 while voluntary programs are always preferable, the most  
21 successful voluntary programs are backed up with  
22 legislation that will be enacted if measurable goals  
23 aren't met within specific time lines.

24                  In fact, the rechargeable battery recycling  
25 program was not created until legislation had been passed

1 in eight states.

2 I would like to see industry participation  
3 encouraged by incentives that are included in a fee  
4 program. For example, in the used oil program, businesses  
5 that have reached oil from the public are given incentives  
6 through the certified center program. I would also like  
7 to see the Board participate in efforts on a regional and  
8 national level for product stewardship plans.

9 This could occur on a parallel track to the  
10 establishment of a fee on architectural coatings. The  
11 most successful models of producer responsibility and  
12 product stewardship have one thing in common, the cost of  
13 disposal is included in the purchase price of the product.  
14 That way when users of the product need disposal services,  
15 waste management fees are available.

16 I appreciate your time, and I'd like to urge you  
17 to support this recommendation.

18 Thank you.

19 CHAIRPERSON MOULTON-PATTERSON: Thank for being  
20 here and waiting.

21 Sande George.

22 MS. GEORGE: Thank you. I feel sort of like I'm  
23 walking into the lions den here, but here it goes. I  
24 represent the California Paint Council and the National  
25 Paint and Coatings Association. So it's not going to come

1 as a surprise what my thoughts are here.

2 I do want to thank the staff for inviting us to  
3 be participants in the task force, the paint task  
4 management task force. I was sort of under the impression  
5 they were preliminary and that we were going to continue  
6 to try and find some other alternative to a fee, but these  
7 preliminary meetings, at least, were helpful to both sides  
8 for us to understand what the locals are going through and  
9 certainly for the local cities and counties to understand  
10 where the companies are going.

11 The paint coatings industry is very opposed to a  
12 fee on paint in California. And although left over paint  
13 is disposed and recycled, paint is actually a product.  
14 It's a product even though it's actually put in a  
15 landfill, even though it's actually recycled. Whatever  
16 the situation is, it is meant to be used up. It is not  
17 like used oil or fluorescent bulbs or batteries that wear  
18 out or at some point are a waste at the end of the  
19 process.

20 A special fee on this product will indicate that  
21 to the paint industry and other manufacturers that the  
22 State intends to impose similar special taxes or fees on  
23 other products that must inevitably end up in the  
24 landfill.

25 It was just stated earlier that every product

1 that ends up having some kind of landfill requirement  
2 should have the price included in the cost of the product.  
3 We're first. I mean, I don't think that makes us feel  
4 better, but if that is the way the Board is now going to  
5 look at these issues, I think it's a policy that has a  
6 major change in the way waste fees and the products are  
7 handled in California.

8           The staff has recommended a 15 to 30 cent fee  
9 increase by 25 percent a year with future fees. That fee  
10 will not be viewed by industry as a small percentage of  
11 the price of paint as mentioned in the staff report. It  
12 has to be viewed by all the other things that currently  
13 the paint industry is having to deal with in this state  
14 including a fee on paint and oil companies to fund the  
15 Childhood Lead Poisoning Prevention Act.

16           Those fees on companies are between 2.5 and 3  
17 million dollars per year. In addition, there will be  
18 probably large price increases that will be required for  
19 manufacturers in the next couple of years as they try to  
20 meet the new lower or no VOC air emission requirements  
21 that CARB and the air districts are currently going  
22 through in the next couple of years.

23           There are even going to be more severe increases,  
24 with the result that -- with the more severe VOC limits  
25 that are kicking in after 2006. Most of the paint lines

1 that you currently know of in California will have to be  
2 completely reformulated. That will cost each company  
3 millions of dollars. And believe me, that is their  
4 biggest problem right now. But this would be added to the  
5 cost of doing that.

6           The ability of consumers to buy cheaper, higher  
7 VOC content paints and better quality paints, and what  
8 have you, with these new formulations on line or across  
9 the border is also a consideration. Competition with  
10 other products like siding and wallpaper and the ability  
11 particularly recently of formulators and companies,  
12 particularly smaller manufacturers, to pass on these costs  
13 to the consumer has been a real problem.

14           The profit margins are being squeezed due to the  
15 demand for low-cost products from giant retailers  
16 including WalMart and Home Depot, which simply do not  
17 allow changes in their contracts to increase for any  
18 reason.

19           All of these costs add up and they are viewed as  
20 a whole by the industry. Staff alternatives to fees  
21 discussed in the background paper for this item such as  
22 take back programs and recycling paint are costly and  
23 require more space than most companies have on site.  
24 Although, a few of the larger companies mentioned are  
25 actually considering this, they're right now experimental



1 and limited at this point.

2           Recycling used paint is particularly difficult.  
3 Contamination bacteria, differing VOC contents depending  
4 on the year that they were made, lack of color control,  
5 lack of a large market for recycled paint, although I  
6 understand that would be expanded through the mandatory  
7 buy programs, and a requirement for an entirely new and  
8 separate manufacturing line to use recycled paint in your  
9 current factory all make this almost nearly impossible for  
10 most of the companies.

11           If alternatives to reduce the cost of these  
12 household hazardous waste programs at the local level are  
13 needed, and we understand that they are, industry has  
14 suggested several options that we would be willing to  
15 continue to work on with local agencies and the Board  
16 including the consumer education mentioned by Anna, I  
17 think in some of these discussions, that the consumers buy  
18 only the paint that they need; they use the leftover paint  
19 as primers; they store the paint properly; donate what's  
20 left over; air drive the paint which is legal in  
21 California to do.

22           The VOC content in paint is the same whether it  
23 dries in a can or whether it dries on your walls. It's no  
24 different at all, and the total consumption rather than  
25 disposal of the paint.

1           The other big issue that we did talk about and  
2 we're continuing to talk about with the Department of  
3 Health Services and others is removal of latex paint as a  
4 Cal Haz Waste. The last hazardous constituents, which  
5 were biocides, were dropped for use in latex paints in  
6 1990.

7           Since that time, the Fed EPA no longer considers  
8 latex paint as hazardous and most states don't either,  
9 most other states other than California.

10           We're also more than willing to work directly  
11 with the individual counties to develop other local  
12 alternatives. I think we expressed that in our meetings.  
13 And that's something that's not really been done yet here  
14 in California in any organized way.

15           And finally, there is the option two of increased  
16 trash fees at the local level. We understand it's  
17 difficult to do, but there was really wide discrepancy  
18 based on the cities and counties as to what they charge  
19 for these programs and disposal generally. Usually, since  
20 everybody benefits, disposal fees are what counties have  
21 traditionally used to pay for disposal costs for other  
22 products. And the trash fees spread that disposal costs  
23 over a large group of fee payers.

24           If, on the other hand, as I said the Board no  
25 longer believes that disposal fees are the method of

1 payment for disposal of products, but advanced disposal  
2 fees are, which is essentially what you're talking about,  
3 that would be a major shift in the way the State does  
4 business. And products that are disposed should be  
5 subject to similar policies.

6 In conclusion, the paint industry has devoted  
7 considerable resources to the development of coatings that  
8 are environmentally friendly. And nowhere is that truer  
9 than in California, simply because of the air and air  
10 attainment issues.

11 Concern for the environment has pushed coatings  
12 technology to the limit. Paints in California are  
13 manufactured to meet the toughest air quality standards in  
14 the country to the point that today's latex paints are  
15 considered nonhazardous, as I mentioned, according to EPA  
16 testing protocols.

17 And for our companies knowing this to pay a fee  
18 on the nonhazardous waste is a little bit of a stretch for  
19 them. It's difficult for them to understand.

20 We're prepared to work with the Board and county  
21 hazardous materials program managers in their efforts to  
22 manage unwanted leftover paints in the most cost effective  
23 manner possible.

24 However, we don't believe that the only  
25 acceptable solution to paint management is to impose

1 special fees on paint products. And there's no surprise  
2 for all those reasons both CPC and APCA do oppose and will  
3 mostly likely invite other product manufacturers to join  
4 us when this hits the legislature, if that's a  
5 possibility.

6 I do hope you're too tired to ask me any  
7 questions. If not, that is -- I thank you for the  
8 opportunity to at least express our views on this.

9 CHAIRPERSON MOULTON-PATTERSON: Thank you, Ms.  
10 George. Are there any questions?

11 BOARD MEMBER PAPARIAN: Just one quick one. Have  
12 you approached the Department of Toxic Substances Control  
13 with regards to the question of it?

14 MS. DOWELL: Yes. And we were delisted in the  
15 last year of the Wilson administration. So if you need  
16 more explanation after Davis came in, that was all thrown  
17 out, so we are starting from scratch.

18 But, yes, it was the delisting process. I don't  
19 know if you remember the RSU process that they were going  
20 through. It was on the --

21 BOARD MEMBER JONES: Very well.

22 MS. DOWELL: It was not looked on favorably,  
23 although we did have a good case, I have to say. But,  
24 yeah, it was on that list and Davis essentially stopped  
25 all of that process, and it sort of retreads to look at

1 what all of the decisions are going to be made as to how  
2 some are delisted in the future.

3 BOARD MEMBER PAPARIAN: Thanks.

4 CHAIRPERSON MOULTON-PATTERSON: Senator Roberti.

5 BOARD MEMBER ROBERTI: Just one point. Mr.  
6 Paparian mentioned to me, but he didn't raise it, but he  
7 wanted to, we placed a fee on motor oil and thus will -- I  
8 can think it's most comparable to paint, so --

9 CHAIRPERSON MOULTON-PATTERSON: Okay.

10 BOARD MEMBER EATON: Procedurally, we will bring  
11 this item back then in a form that we will be able to  
12 actually look at?

13 DEPUTY DIRECTOR LEARY: We could, if that's the  
14 Board's desire, come back to the Board with some sort of  
15 fleshed out legislative proposal that incorporates a  
16 number of the concepts that's laid out here. And for  
17 your --

18 BOARD MEMBER EATON: What was your intent in the  
19 item, just that you would approve a concept and you would  
20 go out and do the legislation and not bring the draft back  
21 to us, so we can look at it.

22 BOARD MEMBER ROBERTI: If you want a draft,  
23 that's fine, but --

24 BOARD MEMBER EATON: I don't have any problem  
25 with the concept.

1               BOARD MEMBER ROBERTI: They're on such a short  
2 leash as far as time now in the Legislature, I would  
3 suspect this should be his draft concept and then we ship  
4 it, then we shop it around and we'll have plenty of time  
5 to vote on amendments, revisions whatever, because  
6 whatever we'll have to put in is not going to be a final  
7 draft.

8               So I'd rather myself, simply because of time, not  
9 to come back here again before we put it across.

10              BOARD MEMBER EATON: That's not my question. The  
11 point is that in terms of whether or not the provisions of  
12 it, I think, it's real important that at least we have a  
13 public hearing on a bill that we would want to support.

14              BOARD MEMBER ROBERTI: But definitely.

15              BOARD MEMBER EATON: That's what I'm trying to  
16 get at is that because valley stakeholders, who might want  
17 to look at the legislation there might be some provisions  
18 that they would like to look at. I'm not saying to delay  
19 your process, but I would like for the Board before and  
20 kind of disposition --

21              BOARD MEMBER ROBERTI: I would have preferred to  
22 do that, but the legislative session being such, I just  
23 don't think we're going to afford before the bill is  
24 itself introduced to take the time.

25              But maybe before we take a formal position on the

1 bill as introduced, we have a hearing.

2 BOARD MEMBER EATON: Yeah, because there's some  
3 supervisions, I mean as we well know. You may not want to  
4 be in a position, as you well know, that comes back from.  
5 Ledge counsel may not be in the form that you had  
6 envisioned --

7 BOARD MEMBER ROBERTI: That has happened before.

8 BOARD MEMBER EATON: -- as well. So I mean if I  
9 don't have a problem at this point. I would like to be  
10 able to see it before we put a support provision. I'm  
11 sure some of the other control agencies would like to see  
12 it as well, but that's not -- just like look at it as well  
13 because I am concerned about how, you know, provisions  
14 are, I'd like to be able to see what's the bill because I  
15 am concerned about how green procurement provisions are  
16 put in there, too, because I think that's important that  
17 we get our own state agencies in line if there was  
18 support.

19 CHAIRPERSON MOULTON-PATTERSON: We still have  
20 some speakers. Thank you.

21 Lesli Daniel.

22 MS. DANIEL: Hi. Thank you very much for  
23 considering household hazardous waste funding today. My  
24 name is Lesli Daniel. I'm the household hazardous waste  
25 program manager from the Sonoma County Waste Management

1 agency.

2           Just to give you an idea of a little bit of what  
3 we're facing at the local level, the Sonoma County Waste  
4 Management Agency services about 4.5 percent of its  
5 household annually. Over the eight years that we've had  
6 our program we've only reached 16 percent of our  
7 households if you take out repeat users. We've collected  
8 over 2,000 -- yeah 2,000 tons of household hazardous waste  
9 and spent \$4.4 million doing it.

10           In 1990, this shows that we were disposing of, in  
11 excess, of 1,000 tons annually into the landfill of  
12 hazardous waste. In 1995, a similar study showed that we  
13 had increased by 39 percent, even though landfill tonnage  
14 had dropped by six percent.

15           We've got a very successful program, but clearly  
16 we've only scratched the surface in terms of really  
17 getting hazardous waste out of the landfill. Funding is  
18 our challenge. We've, as you all hear and know, you faced  
19 huge increases in tissue tip fees in the last ten years.

20           It costs an average of \$1 per pound to manage  
21 hazardous waste. That's \$2,000 a ton. There's nothing  
22 else in the solid waste disposal industry that even  
23 compares to costs that we're facing. We are losing  
24 political support to increase fees locally on a continuous  
25 basis.



1           I hadn't gone to a meeting in six months of my  
2 Board without them suggesting there were not enough cost  
3 controls on the household hazardous waste program. If  
4 we're going to meet the State's policy of no tolerance of  
5 hazardous waste in the landfills, then we're going to have  
6 to come up with some funding.

7           The Sonoma County Waste Management Agency  
8 supports extended producer responsibilities or what we  
9 call EPRs. That is where the industry takes  
10 responsibility for their products when they become waste.  
11 And by the way, paint spoils and paint hardens, it becomes  
12 a waste.

13           We support the idea of the Canadian/European  
14 models. Models that are already being put in place. We  
15 believe that EPRs provide a sensitive -- sensitize the  
16 industry to the concepts and the problems that we're  
17 dealing with when it comes to waste products.

18           It will cover the real costs of disposal. Any  
19 fee that we talk about is merely a subsidy to the real  
20 cost of managing this waste. And there's a lot out there  
21 that we're not capturing. There's a lot being stored as  
22 well.

23           We want the cost to be passed on to consumers,  
24 because we want the consumers to acknowledge the cost of  
25 the product they're purchasing in its entirety, and we

1 believe that EPRs will do that.

2           We support EPRs because we believe industry is in  
3 the best position to do the most cost effective thing and  
4 the most efficient way of managing these products. We  
5 support EPRs because we believe that they will encourage  
6 reformulations to nontoxic or less toxic products.

7           We support EPRs because we believe that they will  
8 encourage retailers to discourage over purchasing,  
9 encourage consumers to purchase only what's necessary to  
10 do the job.

11           We support EPRs because we think they'll  
12 eliminate the administrative costs of collecting money  
13 through the State to pass it back through the local  
14 government. We support EPRs because we believe that  
15 industry will provide the flexibility to manage this  
16 program, these waste streams, most effectively. It  
17 doesn't mean it leaves local government out of the loop.  
18 If they wish to use our collection process, then they can  
19 negotiate with us.

20           It can happen. RBRC, the Rechargeable Battery  
21 Recycling Corporation, is a great model and we applaud  
22 their works. We utilize their program.

23           SCW Mayes supports EPRs on all household  
24 hazardous waste products. Funding is necessary for all  
25 household hazardous wastes not just architectural

1 coatings. Besides, as you just heard the industry rep,  
2 they're not going to stand this one alone. They're going  
3 to bring in the rest of the industries that are probably  
4 going to see it coming down the road. Why fight the  
5 battle twice or more.

6           In lieu of an EPR proposal before us today, the  
7 Sonoma County Waste Management Agency does support the  
8 proposal before you from staff. Paint is a good start.  
9 It does represent 42 percent of the waste collected at our  
10 roundups. I would like to highlight, though, if we're  
11 talking about a fee, it is necessary to revisit a fee on a  
12 regular basis to address cost increases.

13           I have attended several paint task force meetings  
14 and industry has unequivocally said that they believe this  
15 is an issue for government to manage, and industry has not  
16 offered any alternatives.

17           If you say no to a fee or an extended producer  
18 responsible policy, then we will simply not meet the  
19 State's no tolerance policy for hazardous waste municipal  
20 landfills. We simply cannot afford to do it.

21           Thank you very much for your time.

22           CHAIRPERSON MOULTON-PATTERSON: Thank you, Ms.  
23 Daniel. We have a letter by Mike Mohajer who had to leave  
24 in support of the staff's position and the Board -- well,  
25 staff's position, excuse me.

1           And we also had Rick Best wanted to speak on it,  
2 but he had to leave. But he wanted me to put in the  
3 record that he supports the staff's recommendation.

4           Thank you. And that's it with the speakers. I  
5 hope I didn't cut you off, Mr. Leary, a few minutes ago.

6           DEPUTY DIRECTOR LEARY: Not at all.

7           CHAIRPERSON MOULTON-PATTERSON: Okay. Did  
8 Senator Roberti want to come back? Okay, we have Senator  
9 Roberti's motion seconded by Mr. Medina and that was to  
10 Resolution 2001-23 for the staff recommendation.

11          Please call the roll.

12          SECRETARY VILLA: Eaton?

13          BOARD MEMBER EATON: I'd like to just read the  
14 resolution. Senator, we're going to bring it back, right?

15          BOARD MEMBER ROBERTI: Yes.

16          BOARD MEMBER EATON: A spot bill and all this?

17          CHAIRPERSON MOULTON-PATTERSON: So, Mr. Eaton,  
18 your question was that any draft legislation?

19          BOARD MEMBER ROBERTI: We're going to.

20          BOARD MEMBER EATON: The issue is time assured.

21 We have to close shut --

22          BOARD MEMBER ROBERTI: Compose and shop now.

23          BOARD MEMBER EATON: -- under a bill that has its  
24 jurisdiction with the Committee and so on and so forth.

25 But before any final vote or we solicit, we'll be able to

1 have a public hearing as we should on any support.

2 BOARD MEMBER ROBERTI: We'll notify whoever the  
3 author is that was doing it.

4 BOARD MEMBER EATON: Stakeholders and so on and  
5 so forth that the industry as well as others may get it in  
6 advance because they tighten up the language and hopefully  
7 we'll get some suggestions.

8 CHAIRPERSON MOULTON-PATTERSON: Thank you for  
9 bringing that out.

10 SECRETARY VILLA: Eaton said aye.  
11 Jones?

12 BOARD MEMBER JONES: Aye.

13 SECRETARY VILLA: Medina?

14 BOARD MEMBER MEDINA: Aye.

15 SECRETARY VILLA? Paparian?

16 BOARD MEMBER PAPARIAN: Aye.

17 SECRETARY VILLA: Roberti?

18 BOARD MEMBER ROBERTI: Aye.

19 SECRETARY VILLA: Moulton-Patterson?

20 CHAIRPERSON MOULTON-PATTERSON: A.

21 Thank you, Mr. Leary and we'll go on to your  
22 next -- last item, 24 was continued.

23 DEPUTY DIRECTOR LEARY: As I mentioned in the  
24 briefing workshop, the operator for 24 has requested it be  
25 continued so we'll bring that back in February.

1                   Agenda Item 25, recognizing the Board

2   tomorrow normally -- at this time, might be home watching

3   a good movie. We would like to --

4                   CHAIRPERSON MOULTON-PATTERSON: We don't want to  
5   miss West Wing.

6                   (Laughter.)

7                   DEPUTY DIRECTOR LEARY: That Agenda Item 25 will  
8   be presented by the Board's own action hero, Mr. Todd  
9   Thalhamer.

10                  MR. THALHAMER: Good evening, Madam Chair, Board  
11   members. I'm Todd Thalhamer from the Permitting and  
12   Enforcement, also secret agent to the tire remediation  
13   program here.

14                  (Laughter.)

15                  MR. THALHAMER: For the Tracy Tire Fire Project.

16                  As you know, the Board has successfully  
17   suppressed three fires at the former Royster facility.  
18   This was a very innovative project. We used fire  
19   equipment, heavy equipment, dosers, excavators, breathing  
20   supply. We basically created a very small city out in  
21   Royster, imported 80,000 gallons of water, set up a water  
22   delivery system and continued on.

23                  This particular project was the first time in  
24   nine years that I'm aware of that the Board became the  
25   leader, became the incident commander. And under the

1 unified command system was the lead agency responsible for  
2 suppressing the fire.

3           Before I illustrate this particular project with  
4 a quick video, I just would like to let the Board know  
5 that I do have two, what I call, stakeholders in my  
6 project here left. King Valley construction, which we'll  
7 see in the video, was the main operator in the steam,  
8 smoke, flame, whatever else was kicked up.

9           And, again, Chief Marion for SP Environmental was  
10 my left-hand person for the health and safety. He had to  
11 go to another Board meeting later this evening.

12           So without further ado.

13           (Thereupon a video was shown.)

14           MR. THALHAMER: Before I conclude, I would like  
15 to take the opportunity to thank PIO officers, Chris Peck  
16 and Randy Kladisel, during the project. They were  
17 extremely helpful on keeping me focused on the project and  
18 keeping control of the press.

19           At one time, I believe we counted over 23  
20 different press individuals who were at the site. I would  
21 also like to thank the Board for taking the risk to go  
22 ahead and put this particular facility out.

23           I know that that was a concern of some of the  
24 Board members. But, again, we've balanced all the  
25 environmental impacts, and it was a very successful

1 project.

2 I can recall one small event. We went into town  
3 to have dinner and I got thanked by at least seven  
4 different individuals for putting the fire out. So I'd  
5 just like to pass that along.

6 Thank you.

7 CHAIRPERSON MOULTON-PATTERSON: Todd, we'd like  
8 to thank you and everyone involved for a tremendous job.  
9 Thank you very much for sharing this.

10 DEPUTY DIRECTOR LEARY: That concludes special  
11 waste.

12 (Applause.)

13 CHAIRPERSON MOULTON-PATTERSON: Thank you, Mr.  
14 Leary and everyone on your team for that.

15 CHAIRPERSON MOULTON-PATTERSON: Ms. Wohl, waste  
16 prevention.

17 DEPUTY DIRECTOR WOHL: Item 28 for -- Patty Wohl,  
18 Deputy Director Waste Prevention Market Development  
19 Division.

20 Item 28, consideration of approval of the scope  
21 of work for a plastics white paper contract.

22 Bill Orr will present.

23 MR. ORR: Good evening.

24 CHAIRPERSON MOULTON-PATTERSON: Good evening, Mr.  
25 Orr. Right before you present the item, I'm sorry, Mr.



1 Peters, I forgot to check.

2 THE REPORTER: I'm fine.

3 CHAIRPERSON MOULTON-PATTERSON: You're fine.

4 Just let me know when you need a break.

5 Mr. Orr.

6 MR. ORR: Good evening, Madam Chair and Board  
7 Members I'm Bill Orr with the recycling technologies  
8 branch. Item 28 is for the consideration of a scope of  
9 work with the contract for the development of an issues  
10 paper or white paper on plastics for up to \$100,000.

11 As a reminder, plastics represents about nine  
12 percent of the waste stream in the Board's 1999 waste  
13 characterization study and the use of plastics has been  
14 steadily accelerating.

15 Since 1990, 13 times more virgin plastic was  
16 produced than recycled. Clearly, plastics recycling has  
17 failed to keep pace with this explosive growth. As a  
18 result, the recycling packaging container recycling rate  
19 has declined from 25 percent in 1995 to 18 percent in  
20 1999.

21 In addition, the current plastics laws, which  
22 include the RPPC program and the trash bag certification  
23 program, address less than ten percent of plastics, that's  
24 about one percent.

25 The purpose of this scope of work is to take a

1 comprehensive look at plastics. And I've actually handed  
2 out a revised scope of work that takes into account  
3 comments that were received at the Board briefing last  
4 week and also comments that were received at the  
5 interested parties meeting last Friday.

6           The objectives of the scope of work are to  
7 basically ensure resource conservation in the  
8 manufacturing and plastics use, the plastics recycling  
9 rate and specifically collection, increase the use of  
10 recycled plastic by manufacturers both in products and in  
11 packaging and to build on the findings from last year's  
12 RPPC conference.

13           The scope of work contemplates retaining a  
14 contractor, a think tank, a partial third party that  
15 understands the complexities of plastics.

16           What I'd like to do, just briefly, is to  
17 highlight the changes in the scope of work from the one  
18 that's in your Board packet. The first change is that  
19 there were comments at the Board briefing that it focused  
20 more on barriers than solutions. And so on a number of  
21 instances, you'll see the language has been modified to  
22 refer to innovative solutions instead of barriers. And  
23 you'll see that several times throughout the scope of  
24 work.

25           At the interested parties meeting, there was

1 concern about the use of the term reduction in consumption  
2 of virgin plastics, so that's been modified to indicate  
3 resource conservation. I've substituted a more detailed  
4 task list for the detailed schedule that was previously in  
5 the scope of work. I've added -- I specifically  
6 delineated plastic container manufacturers to the list of  
7 stakeholders that was included in the scope of work. I've  
8 also under task made reference to the previous rigid  
9 plastic packaging container conference findings as the  
10 basis for additional analysis.

11 I've shortened the time frame for completion of  
12 the report from 12 months to 9 months and reduced the  
13 number of workshops that are contemplated as part of the  
14 contract from four to two.

15 So that's a summary of the contract concept as  
16 revised. There are also copies in back for people that  
17 are still in the audience. Staff recommendation would be  
18 to approve the scope of work as revised and amend  
19 resolution -- the resolution, which is 2001-1 to reflect  
20 the amended scope of work.

21 Are there any questions?

22 CHAIRPERSON MOULTON-PATTERSON: What was the  
23 number?

24 MR. ORR: It's actually the very first one of the  
25 year 2001-1.

1                   CHAIRPERSON MOULTON-PATTERSON: Questions?

2                   BOARD MEMBER PAPARIAN: The one thing I'm  
3 wondering, in light of the changes and then also  
4 understanding that there is some pressure on IWMA, that  
5 I'm certainly seeing in terms of what's available, can we  
6 do this for somewhat less money? Can we do it for say  
7 \$75,000 instead of 110?

8                   MR. ORR: Yeah, I think -- yes. I think given  
9 the fact that the workshops were reduced from four to two  
10 that it would be reasonable to reduce the amount to  
11 \$75,000. The other thing that was taken into  
12 consideration in \$100,000 was to try to attract high  
13 caliber bidders on the concept. But I think given the  
14 reduction in the workshops, that that would be reasonable.

15                  BOARD MEMBER PAPARIAN: Okay.

16                  CHAIRPERSON MOULTON-PATTERSON: Okay. We have a  
17 speaker. Any other questions of the Board before we go to  
18 speakers?

19                  Tim Shestek.

20                  MR. SHESTEK: Thank you, Madam Chair and members,  
21 Tim Shestek for the American Plastics Council. The hour  
22 being late, I'll just take a brief moment. I do want to  
23 thank Mr. Orr and Board staff for taking some of our  
24 comments we had at the interested parties meeting. Over  
25 the last couple of years I think we've developed a fairly

1 good working relationship with the Board member and Board  
2 staff on the plastics recycling issue.

3 But just on this particular point, we feel that  
4 the expenditures of Board funds for a study may be an  
5 imprudent use of Board resources, as the Board held a  
6 conference last year on plastics recycling and plastic  
7 packaging in particular. Many of the findings from that  
8 conference will probably be rehashed through this study.

9 And one of the major consensus points that came  
10 away from that conference was that public education is  
11 necessary and it's an ever increasing plastics recycling.  
12 As the Board is well aware, we've been partnering with you  
13 folks and some others on a plastics campaign that has  
14 resulted in increased numbers of plastic bottles being  
15 collected and local community plastics recycling  
16 infrastructure.

17 We hope to continue that campaign again on a  
18 statewide basis this coming year. And I know next month  
19 that the Board will be considering a partnership of that  
20 particular endeavor next month.

21 Whether the Board would want to reallocate this  
22 money to that, we could always be open to discussing that.  
23 But we believe that the money expended for the study may  
24 be better used in other ways. And that's actually helping  
25 on the ground recycling programs and public education

1 campaigns like the one we're sponsoring this year.

2 Thank you.

3 BOARD MEMBER ROBERTI: I'm a little confused as  
4 to why we're doing a white paper.

5 MR. ORR: That's correct.

6 BOARD MEMBER ROBERTI: What is a white paper?

7 MR. ORR: It's basically an issues paper that  
8 would analyze -- it would pull together a broader group of  
9 stakeholders than traditionally we dealt with in the RPPC  
10 arena to look for innovative solutions. And that, in  
11 turn, would present policy options to the Board. The  
12 Board has never really comprehensively looked at plastics.  
13 They've looked at C&D. They've looked at organic  
14 materials.

15 This would basically be stepping back from the  
16 current RPPC law to look at how could the Board's efforts  
17 be more effective in the area of plastics.

18 CHAIRPERSON MOULTON-PATTERSON: And the cost is  
19 \$100,000?

20 MR. ORR: Well, actually I think what we talked  
21 about is \$75,000 would be acceptable. There was \$100,000  
22 that was allocated in the BCP as part of the rigid plastic  
23 packaging BCP.

24 CHAIRPERSON MOULTON-PATTERSON: Well, any  
25 comments?

1 (Laughter.)

2 BOARD MEMBER ROBERTI: I'm just sort of thinking.

3 I'll make the motion to move 2001-1.

4 BOARD MEMBER PAPARIAN: I'll second it to get  
5 this thing moving.

6 CHAIRPERSON MOULTON-PATTERSON: And that's at  
7 \$75,000?

8 BOARD MEMBER ROBERTI: At \$75,000.

9 CHAIRPERSON MOULTON-PATTERSON: Okay. And so we  
10 have the motion by Senator Roberti, seconded by Mr.  
11 Paparian.

12 BOARD MEMBER ROBERTI: I take it we're really  
13 expanding our plastics world from those that we usually  
14 deal with in to good understanding, research, conversation  
15 going with a whole large array of people.

16 MR. ORR: Absolutely.

17 CHAIRPERSON MOULTON-PATTERSON: And that was  
18 resolution 2001-1.

19 BOARD MEMBER JONES: Is the Department of  
20 Conservation going to be involved in this?

21 MR. ORR: Absolutely. They're definitely listed  
22 on the list of stakeholders and we have --

23 BOARD MEMBER JONES: Maybe they can help fund it.

24 CHAIRPERSON MOULTON-PATTERSON: Yeah, I was going  
25 to say.

1 MR. ORR: If there is a table, maybe they can.

2 CHAIRPERSON MOULTON-PATTERSON: Okay, would you  
3 call the roll.

4 BOARD MEMBER EATON: Can I have a point of  
5 clarification is that the motion that Senator mentioned is  
6 2001-1 but that's not the motion we're voting on. It  
7 would be --

8 BOARD MEMBER EATON: As revised, for the record,  
9 right because he did change it?

10 MR ORR: As revised for \$75,000.

11 BOARD MEMBER ROBERTI: As revised.

12 CHAIRPERSON MOULTON-PATTERSON: But the same  
13 number as revised.

14 BOARD MEMBER ROBERTI: Yes.

15 CHAIRPERSON MOULTON-PATTERSON: Okay, thank you.  
16 Okay, please call the roll.

17 SECRETARY VILLA: Eaton?

18 BOARD MEMBER EATON: Aye.

19 SECRETARY VILLA: Was that an aye?

20 BOARD MEMBER EATON: That was a weak aye.

21 SECRETARY VILLA: Jones?

22 BOARD MEMBER JONES: Aye.

23 SECRETARY VILLA: Medina?

24 BOARD MEMBER MEDINA: Aye.

25 SECRETARY VILLA: Paparian?



1 BOARD MEMBER PAPARIAN: Aye.

2 SECRETARY VILLA: Roberti?

3 BOARD MEMBER ROBERTI: Aye.

4 SECRETARY VILLA: Moulton-Patterson?

5 CHAIRPERSON MOULTON-PATTERSON: Aye.

6 Okay, Item 29.

7 DEPUTY DIRECTOR WOHL: The next three agenda  
8 items number 29, 30 and 31 concern the recycling market  
9 development revolving loan program in the areas of selling  
10 and participating with others in loans. These are the  
11 short-term funding options being recommended by the  
12 Board's leveraging work group to allow continuance of the  
13 program while longer-term term funding options are  
14 explored.

15 As you recall, the Board at the September 19th,  
16 20th Board meeting directed staff to form a leveraging  
17 work group to identify alternative sources of funding to  
18 meet the increased demand loans. The leveraging work  
19 group consists of two Board members, four Recycling Market  
20 Development Zone administrators and RMDZ loan staff.

21 We can either go through the items and Jim can  
22 present them or if you'd prefer to just ask questions  
23 either way.

24 BOARD MEMBER EATON: I'd like to ask you an  
25 initial question. I know in the past there was the sale

1 of loans in 1996, but then there was another bill, a  
2 reauthorization bill, that took place in 1977. That bill  
3 simply allowed \$5 million to be transferred from one of  
4 our accounts to the RMDZ loan.

5           Then last year, as the Legislation states, that  
6 we wouldn't get an automatic transfer. That puts us in  
7 the position right now. And if we wanted to go and get  
8 that money or that the loan program could justify that,  
9 then we could go back to the Legislature in the Budget Act  
10 and seek authorization up to \$5 million. That's  
11 procedurally where we are.

12           The question that I have is that since the  
13 statute change in 1997, which was subsequent to the  
14 original sale, under what authority, because when you sell  
15 loans, you sell them at a discount? So if you had a ten  
16 percent discount on 25 million, you would be losing \$2.5  
17 million of taxpayer dollars as a fiduciary duty, which  
18 under the statute on page 60 we have to repay, eventually,  
19 that subaccount back there.

20           So what is the fiduciary duty we have that we  
21 can't sell loans at a discount because what obligation do  
22 we have? And you say we have authority within the  
23 statute?

24           CHIEF DEPUTY DIRECTOR FISH: I know that you had  
25 authority in 1996.

1                   BOARD MEMBER EATON: You remember 1997 changed  
2 that, because as a result of it -- I wasn't here, but  
3 there was some controversy as it regards why we had to do  
4 it. Then 1997 comes along and they say, you know, we  
5 don't want to sell these loan. It's a taxpayer loss. We  
6 have an obligation to protect these funds and so they give  
7 us these transfers.

8                   So subsequently, what do we have, because I'm  
9 nervous about going out and trying to sell loans where we  
10 lose money. I think we need to fund the program. I just  
11 want to make sure that if we lose, and then plus this  
12 program expires in 2006, so we need the reauthorization.  
13 So how are we, in our report, going to tell the  
14 Legislature or tell the executive branch that we sold  
15 these loans at a loss in hopes of reinvestment and to  
16 recoup and do we have any fiduciary obligation to protect  
17 these funds?

18                  CHIEF DEPUTY DIRECTOR FISH: Well, didn't we do  
19 an analysis of that, say, and then bring that back?

20                  BOARD MEMBER EATON: Yeah, I don't have a  
21 problem. Just bring it back.

22                  BOARD MEMBER JONES: Yeah. Mr. Eaton, brought  
23 the issue up to me last night as a question and I didn't  
24 have the answer. I thought that we had been authorized,  
25 but then when he talked about the change in that law, it

1 was not an issue that I remember us addressing in any of  
2 the work groups.

3 And it raises a real concern for me as it does,  
4 I'm sure, every Board member, because if nothing else, we  
5 would have to make sure that we had the legislative  
6 blessing to go down this path.

7 So I think it's a great catch because it wasn't  
8 the intent to discount notes at the cost of -- as a result  
9 of losing taxpayer dollars. It was a way to take some  
10 dollars and then with cofunding options if the Board  
11 decided to do that, be able to take this program to, at  
12 least, 2006 with the same types of levels of activity that  
13 we've seen in the last year or two.

14 But I think that we really do need to get the  
15 analysis. And I don't think we're in any -- I feel bad  
16 for Steve Loudz because he drove up here, but this was an  
17 issue that came up last night at about, I don't know, 7:00  
18 o'clock. But I think it's incumbent upon us to find out  
19 how that's going to be treated and what we have to do to  
20 make sure that we're covered and that we're not doing  
21 something stupid.

22 BOARD MEMBER EATON: I think -- I'm not sure,  
23 there may be other agencies that have sold their loans.  
24 If so, what have been the parameters that -- there hasn't  
25 been.

1 MR. ORR: There hasn't been.

2 BOARD MEMBER EATON: And see that's what worried  
3 me, because I remember the statute. And it went back  
4 through the original O'Connell legislation, authorized the  
5 program and then either share or something else in 1997  
6 changes and that's where the subaccounts there get  
7 established and transfer. So all I would like to be able  
8 to do is get some parameters on what our authority is as  
9 it relates to protecting the public taxpayer dollars and  
10 our fiduciary obligations on the loans, since in the  
11 statute we have to pay back eventually, do we not, the  
12 IWMA account?

13 CHIEF DEPUTY DIRECTOR FISH: We do and that's an  
14 issue that we need to look at.

15 BOARD MEMBER EATON: We're going to lose money no  
16 matter what way, if you sell the loans.

17 CHIEF DEPUTY DIRECTOR FISH: But I think on page  
18 21, which was the authority that I remembered and then  
19 couldn't find, the Board has some authority,  
20 notwithstanding provisions that allow it, to sell any of  
21 its loans.

22 And so we need to look at the fiduciary  
23 responsibility of paying back the IWMA in concert with the  
24 fact that the Board does have their authority to sell  
25 their loans.

1               BOARD MEMBER EATON: That just may require a  
2 legislative kind of amendment and authorization or it  
3 could even be done by Budget Control Act or whatever since  
4 we can go through it. But I think it's important at least  
5 if we're doing it. I don't have a problem funding the  
6 program or even funding in the budget to get more money  
7 for it. But it is part of that, so we are just -- so that  
8 eliminates 29, 30 and 31.

9               DEPUTY DIRECTOR WOHL: Twenty-nine and 30.

10              MR. LOUDZ: I would like to speak to those  
11 points, if I could.

12              BOARD MEMBER PAPARIAN: I'll just --

13              CHAIRPERSON MOULTON-PATTERSON: Mr. Loudz.

14              MR. LOUDZ: Yes. I'm Steve Loudz from the  
15 Oakland/Berkeley Recycling Market Development Zone. I'm  
16 also vice-president of the California Association of  
17 RMDZs.

18              I have just a few questions. I think your point  
19 is a good one. It's not one we discussed in these  
20 sessions. However, I guess the general point I would like  
21 to make is whether it moots these items, since all of  
22 these items do not commit the Board -- none of these items  
23 commit the Board of going down the road of doing a  
24 loan/sale.

25              If you look at 29 what it does is it -- and 30

1 and 31. What they do is they say the Board will do some  
2 work and bring back to the Board after the work is done  
3 what a loan sale would look like and what a cofunding with  
4 an outside lender might look like after doing RPFs and  
5 identifying the structure of such a sale et cetera.

6 I would put forth that that investigation could  
7 include looking at this issue of whether it's possible.  
8 But we've worked long and hard on this process, and so I  
9 guess that's my point is that -- and the staff can correct  
10 me if I'm wrong, but I believe that these items only  
11 commit the Board to define the terms on which they might  
12 do a sale, and that they might cofund loans out of the  
13 RMDZ. The second question would be whether they are --  
14 and you all would have better information than me, whether  
15 these are taxpayer dollars or whether if they come out of  
16 the IWMA or historically have come out of the IWMA,  
17 whether they're assessed as landfill tipping fees, in  
18 which case they are committed to a mission that is based  
19 more with the RMDZ and say general funds of the State. Am  
20 I confusing that issue?

21 BOARD MEMBER EATON: Yeah. We borrowed the money  
22 from our general fund, not the State's general fund.  
23 We're a special fund agency. Our general fund is called  
24 the integrated management account.

25 MR. LOUDZ: You also get some of your budget from

1 landfill tipping fees, do you not?

2 BOARD MEMBER EATON: That's all we get.

3 BOARD MEMBER JONES: Our entire budget.

4 BOARD MEMBER EATON: Pretty much. And it's  
5 broken into different accounts.

6 MR. LOUDZ: So my point is if your budget is  
7 coming from the landfill and the assessment -- and that's  
8 mostly by -- partly by 939.

9 BOARD MEMBER EATON: I think the issue is not --  
10 we're not -- I'm not opposed to what you're trying to do.  
11 I don't think, at least right now, we have the authority  
12 to go ahead and do it. And I disagree, because if you  
13 look at the enabling clauses of each of the resolutions on  
14 one you said we approve the concept to sell the loan. I'm  
15 not ready or prepared to vote for that until I know we  
16 have the authority to do so. The other resolution, the  
17 enabling one says to approve a contract concept in a  
18 scope work.

19 A scope of work with the agency, that's just more  
20 than exploring. A scope of work for this agency actually  
21 commits us to actually doing that. And I'm not prepared  
22 at this stage. I think it's something that can be worked  
23 out. But there are some other complications as a result  
24 of that 1997 legislation. And I know of all the hard work  
25 that went into it and it has nothing to do with it. It's



1 just to make sure that we are on solid ground with what we  
2 have to do in order to be able to accommodate that,  
3 because there are provisions in this statute that were not  
4 present in 1996, but are in 1997, which says we have to  
5 pay back the subaccount, which is our general fund.

6           It's a transfer of money, but there are -- we  
7 have to pay it back. So if we are losing money -- if for  
8 some reason we take a discount on the loans, let's use the  
9 example of 25 million and it's a ten percent discount, and  
10 there's all kinds of other contract terms that go into the  
11 discounting of a Loan, for instance, those who would buy  
12 those give us all kinds of contingencies, for instance, if  
13 they default, then we may not ever get that money, so  
14 that's a further discount on it. We are still obligated  
15 to pay back the other account, the full amount of any  
16 loan.

17           So while we may only have 23 million in  
18 repayment, we are still obligated to pay back 25 million  
19 under the statute, and all I'll just say is how do we get  
20 that going. And the fact that Mr. LaTanner says no other  
21 agency has done it, there's got to be some kind of  
22 prohibition or authority that's lacking for fiduciary or  
23 taxpayer sort of protection that we have to have to  
24 preserve the integrity of the loan program.

25           That's all I'm trying to find out, is just a

1 simple step. I'm sure they can find it out very quickly  
2 with some assurances. Then everything can move forward  
3 and we'll have some better idea. But you understand we  
4 have to pay that back, so we're going to make up that  
5 shortfall.

6 MR. LOUDZ: I do understand that. I mean, I  
7 would just make one -- a couple of further comments  
8 actually that I believe in the case of the first sale in  
9 '96 that was kind of on the cusp of a pretty major  
10 recession in this State. It did the sale. And the  
11 command actually fell after the sale, after the money was  
12 raised through the first sale.

13 And I believe the money was put in other pots in  
14 the agency. So the point is the loan fund has lost money  
15 on a net basis in other cases or the RMDZ -- when the RMDZ  
16 makes a loan we bring back more than we put out. That's  
17 what loans are all about too.

18 So I hear you. I am disappointed. I haven't  
19 been here as long as you, so I can't claim I've been that.  
20 But when you say, very quickly, do we have any kind of  
21 indication of -- are we talking next month, are we talking  
22 three months? I've got to report back to 40 RMDZs  
23 tomorrow morning on this item.

24 BOARD MEMBER JONES: Madam Chair.

25 CHAIRPERSON MOULTON-PATTERSON Yes, Mr. Jones.

1                   BOARD MEMBER JONES: Madam Chair, I think that  
2 the discussion is good. I think this has to be continued  
3 for one month, all three items, do what you can to get it  
4 done and we'll notify you if there's some kind of -- if  
5 it's going to take longer than a month, but I have been  
6 assured that we should be able to get this information and  
7 have it on the agenda or continue it to next month's  
8 agenda.

9                   BOARD MEMBER EATON: You see the first question  
10 that's going to be asked of this body, probably in  
11 particular, are the chairperson of the budget subcommittee  
12 is in this process is like, okay, on your RMDZs are you  
13 going to want any money? We weren't allocated in the  
14 budget; is that correct?

15                  CHIEF DEPUTY DIRECTOR FISH: Allocated money for?

16                  BOARD MEMBER EATON: You know, we used to have an  
17 automatic transfer that ended.

18                  CHIEF DEPUTY DIRECTOR FISH: Yes.

19                  BOARD MEMBER EATON: Now, we have to justify the  
20 amount of money we want to fund.

21                  CHIEF DEPUTY DIRECTOR FISH: Well, we have the  
22 ability to fund up to five million.

23                  BOARD MEMBER EATON: With annual -- before we  
24 used to get automatically, now we have to seek a  
25 permissive.

1 CHIEF DEPUTY DIRECTOR FISH: Right.

2 BOARD MEMBER EATON: And what I'm trying to say,  
3 I don't want this Board or whoever, the Subcommittee, to  
4 have to respond to a question while you didn't go to seek  
5 the authority, with regard to up to five million and in  
6 some cases, you know, we're just trying to cross the "Ts"  
7 and dot the "Is".

8 MR. LOUDZ: No doubt. I'm not questioning the  
9 importance of the issue you raise at all. I think there  
10 was a presumption that we could do a sale in the  
11 Committee. And if that's unclear, then I understand.

12 CHAIRPERSON MOULTON-PATTERSON: We do apologize  
13 for driving and waiting for days.

14 It looks like we're going to have to continue  
15 them.

16 BOARD MEMBER JONES: Yeah, I mean --

17 CHAIRPERSON MOULTON-PATTERSON: Just out of  
18 courtesy is craig johnson or John Davis still here?

19 BOARD MEMBER PAPARIAN: Madam Chair?

20 CHAIRPERSON MOULTON-PATTERSON: Sorry, Mr.  
21 Paparian.

22 BOARD MEMBER PAPARIAN: I just wanted to put on  
23 the record here, I know that Mr. Eaton has raised some  
24 good points about our legal authority. He's a little  
25 queasy about that. I think we all share that queasiness.

1           I am also uneasy on the merits of the proposal  
2 and I wanted just to alert folks to that. I think that it  
3 would certainly raise a lot of money and boost the program  
4 in the very short-term. I think that this is a program  
5 that needs to be sustainable over the very long term. And  
6 perhaps what we should be thinking about are ways to boost  
7 the overall amount of money in the program.

8           I know that there's proposals right now to pull  
9 in a couple million dollars of tire money for tire related  
10 RMDZ projects. And maybe we should just try to be a  
11 little more creative and come up with some additional  
12 sources of revenue for the program, and at the same time  
13 look at some possible leveraging options with other loan  
14 programs that are available in the State Treasury or  
15 Federal Treasury.

16           And I know the Treasurer's Office administers  
17 some programs that it may be possible to work with. So  
18 just for closure of where I'm coming from to put on the  
19 record that I am uneasy on the merits of the proposal.

20           CHAIRPERSON MOULTON-PATTERSON: Senator Roberti?

21           BOARD MEMBER ROBERTI: Just to give you a  
22 slightly different perspective, I visited a number of  
23 firms that have received RMDZ loans. My own feeling is  
24 what the program needs is a gust of energy for people to  
25 know us around, that it's available. So that's just off

1 the top of my head, and I want to hear next week the  
2 legalities, and also exploring Mr. Paparian's concerns.

3 My own feeling is I think this is a decent  
4 proposal, especially since it's been brought in by the --  
5 our State management of RMDZ programs themselves, whatever  
6 you call yourselves.

7 MR. LOUDZ: Thank you.

8 CHAIRPERSON MOULTON-PATTERSON: So those three  
9 items then will be continued and you get back to us as  
10 soon as possible.

11 MR. ORR: Sure, thanks.

12 CHAIRPERSON MOULTON-PATTERSON: That about does  
13 it, I think.

14 Anything else? Have I forgotten anything?

15 Okay, this --

16 BOARD MEMBER EATON: I just have one thing and  
17 just one lobby thing that -- I've been here a number of  
18 years and I'd just like to introduce my wife who's  
19 attending for the first time and also to lobby on behalf  
20 of the Valentine's Day. I told her to come on down and  
21 see who could get -- maybe the 13th is our briefing day  
22 and not Valentine's Day. So my wife Mara just raise your  
23 hand.

24 (Applause.)

25 CHAIRPERSON MOULTON-PATTERSON: Hi, Mara. Thank

1 you for being here. I'm really glad to find out about  
2 this romantic bone in some of these bodies. I would like  
3 to be home with my husband on Valentine's day, so thank  
4 you. So the 13th and 15th.

5 CHAIRPERSON MOULTON-PATTERSON: This meeting is  
6 adjourned.

7 (Thereupon the California Integrated  
8 Waste Management Board meeting was  
9 adjourned at 8:20 p.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE OF REPORTER

2 I, DORIS M. BAILEY, a Certified Shorthand  
3 Reporter of the State of California, and Registered  
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the  
6 foregoing California Integrated Waste Management Board  
7 meeting was reported in shorthand by me, Doris M. Bailey,  
8 a Certified Shorthand Reporter of the State of California,  
9 and thereafter transcribed into typewriting.

10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said meeting nor in any  
12 way interested in the outcome of said meeting.

13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 6th day of February, 2001.

15

16

17

18

19

20

21

22

23 DORIS M. BAILEY, CSR, RPR, CRR

24 Certified Shorthand Reporter

25 License No. 8751



1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand  
3 Reporter of the State of California, and Registered  
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the  
6 foregoing California Integrated Waste Management Board  
7 meeting was reported in shorthand by me, James F. Peters,  
8 a Certified Shorthand Reporter of the State of California,  
9 and thereafter transcribed into typewriting.

10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said meeting nor in any  
12 way interested in the outcome of said meeting.

13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 9th day of February, 2001.

15

16

17

18

19

20

21

22

23 JAMES F. PETERS, CSR, RPR

24 Certified Shorthand Reporter

25 License No. 10063